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THE  
NEW CONSTITUTION OF INDIA

by

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*With a Foreword by*

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and

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## FOREWORD.

It is with pleasure that I respond to the request of Professor V. R. Subrahmanya Aiyar to write this Foreword to his brochure, "The New Constitution of India". The Government of India Act of 1935 has stirred the political mind of India to its depths. There are sharp and wide divergences of opinions which are held about it. It may "stare at us offensively" or it may open the door to a wider field of usefulness. But it cannot be ignored and has, in all political quarters, aroused enthusiasm for or against it. In a word, it has challenged the public mind. The Act, therefore, must be considered very important, whatever view we may take of its effects upon the future of India.

It is also a highly complicated document. Statutes always seem complicated to the layman. This one is not only garbed in the usual phraseology but has inherent complexities which tend to overpower the ordinary man.. Moreover, it has a certain delicacy of structure in its inter-dependence of parts and in its flexibility in order to provide future development, especially regarding the Central machinery.

Opinions may vary regarding the Act. But there is no doubt that it is going to affect the destiny of India in the immediate future and that it will remain on the Statute Book for some time to come. Therefore, it is

essential that every educated man should try to understand how it has been framed and how it is going to work. Even its opponents must study it carefully in order to find out ways and means to its eventual supersession.

This study of the Act for the general reader has been considerably simplified by the present brochure. Professor Aiyar has carefully analysed the provisions of the Act bringing out its main features. His explanations are lucid and his grasp of the subject thorough. It is not easy to show all this within two hundred and fifty pages. This is his credit as also the special merit of his book. I have no hesitation in recommending it to all who want clearly to understand the fundamental points of the new constitution and I hope that this book will be widely read by the educated public of India.

INDORE,                    }  
1st. January, 1937.        }

P. Basu.



## PREFACE.

An attempt has been made in the following pages to present a detailed summary of the Government of India Act, 1935. For the benefit of Law students, important Sections of the Act and portions of the Schedules have been reprinted. The scheme of the Act is fully indicated; and explanatory notes are given for several of the Sections. The book may also be of some use to the general readers who may not be interested in historical details relating to administration.

My brother, Mr. V. R. Sadasivan M. A., has helped me considerably in the preparation of this book, and my thanks are due to him.

I am deeply obliged to Mashir Bahadur Dr. P. Basu M.A, Ph. D, B. L. for writing the Foreword.

INDORE,  
January, 1937.

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V. R. S. Aiyar.

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"That humble, simple duty of the day  
Perform he bids; ask not if small or great;  
Serve in thy post, be faithful and obey;  
Who serves her truly, sometimes saves the State"



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"It is axiomatic that the spirit in which a constitution is worked must in the long run count for more than the letter in which it is written. For myself I am able to assure you that, for such time as I am holding my present office, it is my intention to interpret my duty with liberal and sympathetic mind.....For my part I shall be found ready and anxious, when the time comes, to work to the best of my power with any and every political party willing to work the constitution that may succeed in winning the confidence of the electorates."— *His Excellency The Marquis of LINLITHGOW*.

... ..

"The political evolution of India has reached a point where in their respective spheres the Governor-General and Governors of Provinces should more and more seek to observe those conventions which regulate the attitude towards matters of contemporary public controversy, of the Crown in Great Britain and of the representatives of the Crown in, for example, Canada and Australia, for, democratic institutions require for their successful working that all parties in the State which, whether in office or in opposition work within the Constitution, should be able to feel that at the head of the State there is some one above party and above the heat and the dust of party warfare to whom they can at all times and whatever their political fortunes for the time being look with confidence for all proper countenance and support." — *His Excellency The Marquis of LINLITHGOW*.

# THE NEW CONSTITUTION OF INDIA

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## CHAPTER I

### THE FEDERATION OF INDIA.

**Introductory:—** The Government of India Act, 1935, provides for a Federal Constitution for India. The rights and powers hitherto belonging to His Majesty and appertaining to the government of India are exercisable by His Majesty, except in so far as may otherwise be provided in the Act, or otherwise directed by His Majesty. The powers of the Crown relating to Indian States in matters concerning Paramountcy and those not coming within the Federal sphere, shall be exercisable by His Majesty's Representative in that behalf. The Governor-General of India may be appointed as such Representative also, though the office of the Governor-General is distinct and separate from that of the Representative for the exercise of the functions of the Crown in its relations with Indian States, viz the Viceroy. There shall be a Commander-in-Chief of His Majesty's Forces in India appointed under the Royal Sign Manual. (Sections. 2-4.)\*

**The Federal Units:—** The units of the Federation are  
1. The Governors' Provinces. 2. The Indian States acceding to the Federation. The Chief Commissioners' Provinces shall be included in the Federation so established. The

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\* The number of the relevant Sections of the Government of India Act, 1935, is given to facilitate reference for interpretation, and for further elucidation of the matter summarised.

Federation shall be brought into force on the issue of a Proclamation by His Majesty. Such Proclamation may be issued on an address being presented by each House of Parliament, and when the Rulers entitled to choose 52 members of the Council of State and the aggregate population of whose States amounts to at least one-half of the total population of Indian States, have acceded to the Federation. (S. 5)

**Accession of States:—** If His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler of a State, such State shall be deemed to have acceded to the Federation. The Instrument shall declare that he accedes with the intention that all Federal authorities, including legislative and judicial, shall exercise in relation to the State functions vested in them subject to the terms thereof, and for the purpose only of the Federation. The Ruler thereby assumes the obligation that the relevant provisions of the Act will be given effect to in his State so far as they are applicable. The Instrument shall state the extent to which and the subjects in which the Federal Legislature shall enact laws for his State; and there may be supplementary Instruments also. The Instrument shall not be accepted if the terms thereof are inconsistent with the scheme of Federation embodied in the Act. After the Federation is established, the request of a Ruler for Accession to the Federation shall be transmitted to His Majesty through the Governor-General. If the request is made 20 years after the establishment of the Federation, the Governor-General shall not transmit it unless an address for transmitting it is presented to him by each Chamber of the Federal Legislature. A State

## THE FEDERATION OF INDIA

which has acceded shall be called a "Federated State" and all Courts shall take judicial notice of all Instruments of Accession and their acceptance. (S. 6)

**The Executive:—** The executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General. His annual salary is Rs. 250,000. The executive authority of the Federation extends to all matters coming within the legislative competence of the Federal Legislature, to the raising of military forces exercisable by His Majesty, to the jurisdiction over tribal areas. But executive interference in Provincial affairs or in a Federated State is permissible only to the extent to which it is otherwise provided in the Act and the Instrument of Accession. Commissions in the Army shall be granted by His Majesty as in the past. The executive authority of a Ruler is restricted only to the extent to which the executive authority of a Federation becomes exercisable by virtue of a Federal Law. (S. 8)

**Council of Ministers:—** The Council of Ministers shall consist of not more than ten to aid and advise the Governor-General in matters except in so far as he is required to act in his discretion or exercise his individual judgment under the Act in which matters his jurisdiction shall depend on his own interpretation. The G.-G. may preside at the meetings of the Council of Ministers. The Ministers shall hold office at his pleasure, and he may act according to his discretion regarding summoning and dismissal. A Minister shall cease to hold office if he is not a member of either Chamber of the Federal Legislature for six months; his salary shall not be varied during his term of office.



**Reserved Subjects:**—The functions of the Governor-General regarding Defence, Ecclesiastical affairs, tribal areas and external affairs (except relations between the Federation and the Dominions) shall be exercised in his discretion; for this purpose he may appoint counsellors not exceeding three to assist him. (S. 11)

**G-G's. Special Responsibilities:**—The G-G has the following responsibilities:—Prevention of grave menace to the tranquillity of India; safe-guarding financial stability and credit of the Federation; safe-guarding of the legitimate interests of the minorities; safe-guarding of the right of Public servants and their dependants; prevention of the misuse of legislative discrimination; prevention of British or Burmese action subjecting goods to discriminatory or penal treatment; protection of rights of Indian States and of the dignity of their Rulers; prevention of the obstacles to the discharge of his functions in which he is required by the Act to act in his discretion or to exercise his individual judgment. In any matter involving his special responsibility, he shall exercise his individual judgment. (S. 12)

**Instrument of Instructions:**—The Secretary of State shall place before Parliament the draft Instrument of Instructions to the G-G. further proceedings on which shall not be taken except on an address by both the Houses of Parliament to His Majesty praying that the Instrument may be issued. The Secretary of State shall have superintendence and control in matters in which the G.-G. is required by the Act to act in his discretion or exercise his individual judgment. (S. 14)

To give advice to the Governor-General in the discharge of his special responsibility for safeguarding the

## THE FEDERATION OF INDIA

financial stability of the Federation and to the Federal Ministry in financial matters if consulted, the G-G shall appoint a person to be his financial adviser, who shall hold office during the G-G's pleasure. In selecting the adviser, except in making the appointment of the first adviser, the G-G shall consult the ministers. For giving legal advice and for performing other duties of a legal character, if required, the G-G in the exercise of his individual judgment shall appoint an Advocate-General, who must be a person qualified to be appointed a Judge of the Federal Court, on such remuneration as the G-G may think fit. He shall have right of audience in all Courts in British India, and in a case in which federal interests are concerned, in all courts in any Federated State. In consultation with the ministers, the G-G may frame rules for the allocation of portfolios and conduct of business of the Federal Government.

**Federal Legislature:—** The Federal Legislature shall consist of His Majesty represented by the G-G. and two Chambers, viz. The Council of State, and the Federal Assembly. The Council of State shall consist of 156 representatives of British India and not more than 104 representatives of Indian States. Out of 156 seats allotted to British India, 150 will be filled up by election from the Governors' Provinces, Chief Commissioners' Provinces and Communities. The Council shall be a permanent body not subject to dissolution, but one-third of the members shall retire in every third year. The Assembly shall consist of 250 members of British India, and not more than 125 representatives of Indian States. The normal duration of the Assembly is five years, the expiration of which period shall operate as a dissolution. The Chamber must meet

at least once in a year. The interval between the last meeting of one session and the first meeting of the next session must not be more than twelve months. The G-G may in his discretion summon and prorogue the Chambers, or dissolve the Assembly, and has the power to address and send messages to the Chambers with respect to a pending bill or otherwise; the matter referred to therein shall be taken into consideration by the Chamber to which the message is addressed

Every minister, counsellor, and the Advocate-General shall have the right to speak in and take part in the proceedings of the Chambers ( or committees thereof to which they may be nominated ) but shall not be entitled to vote, unless otherwise provided for. The Council has the right to choose the President and the Deputy President who shall vacate their offices on ceasing to be members of the House, and may resign the offices, and may be removed by a majority voting for the resolution for removal of which fourteen days' previous notice is given. In the absence of the President, the Deputy President shall preside. If the office of Deputy President is vacant, such member as the G.-G may appoint, shall act. In the absence of the Deputy President from any sitting, such person as may be determined by the rules of procedure of the Council shall preside. In the absence of such person, any person determined by the Council shall act as President. The President and Deputy President shall receive the salaries fixed by Act of Federal Legislature. In the Assembly the title of the person elected to preside is known as the Speaker, and provision is made for a Deputy Speaker also. The Law relating to the election, remuneration, filling up

## THE FEDERATION OF INDIA

of vacancy of the Speaker and the Deputy Speaker, is the same as the corresponding provision for the President and the Deputy President of the Council of State respectively. Matters before the Houses shall be decided by a majority of votes of the members present and voting. The person presiding has only a casting vote. The quorum for a meeting is one-sixth of the total number of members.

Every member shall take the appropriate oath. No person shall be a member of both the Chambers. A member's seat shall become vacant by his resignation or by his becoming subject to any of the disqualifications for membership. A person shall be disqualified to be chosen as and to be a member if he is an official (other than those holding excepted offices), if he is of unsound mind, or is an undischarged insolvent, or is convicted for or found guilty of illegal election practices, or has been sentenced to not less than two years' imprisonment (unless five years have elapsed since his release), or has failed to duly lodge a return of election expenses required by law (unless five years have elapsed since the date on which the return was due). A person serving a term of transportation or imprisonment for a criminal offence is ineligible. A person holding a ministership in the Federation or in a Province or in a Federated State, though belonging to the regular service in India shall not be deemed to be an official under the Crown in India for the purpose of the provisions relating to ineligibility noted above. If a member absents himself without the permission of the Chamber for sixty days excluding periods of prorogation, the Chamber may declare his seat vacant. Adjournments for more than four consecutive days will be excluded from this computation. The penalty for

sitting and voting when not qualified is rupees five hundred which may be recovered as a debt due to the Federation. The members have freedom of speech; no person shall be liable in respect of the publication by or under the authority of either Chamber of any report, paper, votes or proceedings. Until the privileges of the members are defined by Act of the Federal Legislature, the existing privileges of the members of the Indian Legislature shall be enjoyed by them. Neither the Legislature nor any Committee thereof shall have any punitive or disciplinary powers other than power to remove or exclude persons infringing the rules or behaving in a disorderly manner. Subject to the safeguarding of confidential matter from disclosure, a person may be punished in a court for refusing to give evidence or produce a document on notice for production. Members shall be entitled to receive allowances under the existing rates until the Federal Legislature fixes the rates of allowances and salaries of Members.

**Legislative Procedure:—** A bill may originate in either Chamber. A pending bill shall not lapse due to the prorogation of the chambers, or due to the dissolution of the Assembly if the Council is considering the Bill which has not been passed by the Assembly. A Bill pending in the Assembly lapses on the dissolution of the Assembly. ( S. 30 ) if a Bill has not lapsed by the dissolution of the Assembly, the Governor-General acting in his discretion by message or notification, may call for a joint sitting of both Houses if a Bill passed by one Chamber is rejected by the other, or is kept by the other Chamber for more than six months, or when the chambers disagree as to amendments to the Bill. If the Bill relates to finance or matters in which he is

## THE FEDERATION OF INDIA

required to act in his discretion or exercise his individual judgment, the Governor-General may call for a joint sitting to avoid delay in the passing of the Bill, even though six months have not elapsed since its being passed by one Chamber, or it is not finally rejected, or final disagreement regarding amendments has not taken place. If at a joint sitting, a Bill, with such amendments as are agreed to, is passed by a majority, then it shall be deemed to have been passed by the Indian Legislature. A joint session may be held though a dissolution of the Assembly has intervened since the Governor-General's notification of his intention to summon a joint sitting ( S. 31 ). When a bill is passed by the Chambers, the Governor-General may declare either that he assents to the Bill in His Majesty's name, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure, or return the Bill with a message for reconsideration of specific provisions or considering the desirability of introducing amendments. A Bill reserved for signification of His Majesty's pleasure shall not become an Act unless the Governor-General notifies His Majesty's assent within twelve months after it is presented to the Governor-General on having been passed by the chambers. An act assented to by the Governor-General may be disallowed by His Majesty within twelve months of the G.-G's assent. ( S. 32 )

**Financial matters:**—The G-G shall cause the Annual Financial statement to be laid before the Legislature. It shall show distinctly the expenditure required for due discharge of his responsibilities and expenditure charged on Revenue accounts. The salary and allowances of the G-G's Ministers, Counsellors, Financial adviser, Advocate-General,

Chief Commissioners, Judges of the Federal Court, and pensions of High Court Judges, debt charges for which the Federation is liable, expenditure in connection with defence, ecclesiastical affairs, external affairs (as come within the G-G's. discretion), administration of tribal and excluded areas, and functions of the Crown in its relations with Indian States, sums required for satisfying any decree or award of Court or arbitral tribunal shall be charged on the Revenues of the Federation (S. 33). These are not subject to the vote of the Legislature. But they may be discussed in the Legislatures except the items under salary and allowances of the Governor-General and expenditure for discharging the functions of the Crown in its relation with Indian States. Items not charged on the Revenues shown above, shall be submitted in the form of demands for grants to the Federal Assembly and then to the Council of State who may assent to, or refuse assent to, or reduce, the amount. If the Assembly has refused a demand, the demand shall not be submitted to the Council unless the G-G. directs. If the Assembly has reduced the amount, only the reduced amount shall be submitted to the Council unless the G-G. otherwise directs. If the chambers differ, there may be a joint sitting at the instance of the G-G. The decision of the majority at the joint meeting shall be deemed to be the decision of the two chambers. No demand for grant shall be made except on the recommendation of the G-G. (S. 34) The G-G. shall authenticate by his signature a schedule showing the grants made by the chambers, the sum required for expenditure charged on the revenue, and sums certified by him as required for the discharge of his special responsibilities which were refused or reduced by the chambers. The

## THE FEDERATION OF INDIA

schedule shall not be open to discussion by the Legislature. Supplementary demands may also be made. A Bill for imposing or increasing a tax or for borrowing, or declaring or increasing the expenditure charged on revenues, shall not be introduced in the Council of State. Such a Bill shall not be introduced except on the recommendation of the G-G. A Bill providing for the imposition of fines and penalties, or for demand of license fees is not a Money Bill for this purpose. A Bill which involves expenditure from the revenues of the Federation shall not be passed unless it is recommended for consideration by the Governor-General to the Chambers.

**General Procedure:—**The G-G. shall, in his discretion, make rules regulating the procedure in each Chamber after consulting the Speaker or the President in relation to the matters in which he has to act in his discretion or exercise his individual judgment, or for securing the timely completion of financial business, or for prohibiting discussion or interpellation on matters connected with any Indian State other than those for which the Federal Legislature can make laws for prohibiting discussion, except with the G-G's consent, of Foreign relations, conduct of Rulers of Indian States and Royal families, action of the G-G. relating to the affairs of a Province or administration of excluded and tribal areas other than for Budget Debate. Otherwise the chambers can make rules for their own procedure. The G-G. after consultation with the President and the Speaker may make rules relating to joint sittings and communications between the Chambers. The President of the Council shall preside at a joint sitting of the two chambers. The rules shall provide as to who must occupy



the chair in the absence of the President at a joint sitting (S. 38). The proceedings in the Federal Legislature shall be conducted in the English language. If a member is not sufficiently acquainted with the English language, the rules may provide for his using another language. No discussion shall take place in the Federal Legislature about the conduct of any judge of the Federal Court or High Court (including High Courts in Federated States) in the discharge of his duties. The G-G. may, in his discretion, certify that the discussion of any Bill would affect the peace and tranquillity of India. On such certificate, further proceedings regarding the measure will be stopped. Courts have no jurisdiction to inquire into the regularity of the proceedings in the Legislature. (S. 41)

#### LEGISLATIVE POWERS OF THE GOVERNOR-GENERAL.

**Ordinances:**—The Governor-General has power to issue ordinances when the Federal Legislature is not in session. He shall exercise his individual judgment if the measure would, under ordinary circumstances, have required his previous sanction before being introduced as a Bill. If it is of a nature, which, under ordinary circumstances, he would have reserved for the signification of His Majesty's pleasure thereon, then he shall not promulgate the ordinance on such a subject without instructions from His Majesty. An ordinance has the same effect as a Federal Act. But it shall have effect only for six weeks after the reassembling of the Legislature. If within that period resolutions disapproving of the ordinance are passed by both Houses of the Legislature, the ordinance will become inoperative after the second of the resolutions is passed. An ordinance may be disallowed by His Majesty or withdrawn

## THE FEDERATION OF INDIA

by the G-G. An ordinance would be void if legislates on a subject beyond the legislative competency of the Federal Legislature. (S. 42)

The Governor-General may promulgate in his discretion ordinances for enabling him to discharge his functions in matters in which he is, under the Act, to act in his discretion or exercise his individual judgment. Ordinances of this nature shall be in operation for six months and may be extended for another six months. When such extension is given, it shall be communicated to the Secretary of State, who shall have it laid before Parliament. It shall be subject to disallowance by His Majesty, or may be withdrawn by the G-G (S. 43)

**G-G's Acts:**—Instead of issuing an ordinance under the last provision noted above, the G-G. may, after explaining the circumstances in a message to the Legislature, either enact a Governor-General's Act or attach to the message a draft Bill. One month after sending such draft, the G-G may enact the measure, taking into consideration any address presented to him by the Legislature. Such Acts shall be communicated to the Secretary of State to be laid before Parliament, and are subject to disallowance by His Majesty. These Acts can be enacted only for the purpose of enabling him satisfactorily to discharge his functions in which he has to act in his discretion, or exercise his individual judgment. A Governor-General's Act would be void if it legislates any provision which is beyond the legislative competency of the Federal Legislature. (S. 44)

### SAFEGUARDS AGAINST FAILURE OF CONSTITUTIONAL MACHINERY.

When the Governor-General is satisfied that Government cannot be carried on under the Act, he may issue

a Proclamation declaring his intention to act according to his discretion, and assume all, or any of the powers vested in any Federal body or authority except those of the Federal Court, and issue incidental and consequential provisions. The Proclamation may be varied or revoked later on, and shall be laid before Parliament by the Secretary of State to whom it shall be communicated. The Proclamation shall cease to operate after six months. If and so often as a resolution approving of the continuance of the Proclamation is passed by the Parliament, the Proclamation shall continue for a further period of twelve months. If, for a continuous period of three years, the Government has been carried on under such Proclamation, then it shall cease to have effect, and other provisions of the Act may be used with suitable amendments made by the Parliament for the government of the Federation. But this shall not extend the power of Parliament to make amendments in the Act without affecting the accession of a State. Laws passed by the Governor-General under the powers assumed by the Proclamation, shall, unless repealed earlier, have effect for two years after the date on which the Proclamation ceases to have force (S. 45).

#### PROVINCIAL GOVERNMENTS.

**Provinces :—**The following are the Governors' Provinces:—Madras, Bombay, Bengal, U. P., the Punjab, Bihar, C. P. and Berar, Assam, N. W. F. Province, Orissa, Sind and such others as may be created. Burma shall cease to be part of India. The sovereignty of Berar is with H. E. H. the Nizam. But in contemplation of an agreement with H. E. H. the Nizam, Berar and C. P. will continue to be governed as one Governor's Province; except in the oath of

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allegiance, in all other matters, reference to British India shall be deemed to include Berar.

**Governors:**—The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual. The third schedule prescribes that the salaries of the Governors of Madras, Bombay, Bengal, and the U. P. shall be Rs. 1,20,000 per annum; of the Punjab and Bihar Rs. 1,00,000 per annum; of the C. P. Rs. 72,000 per annum; and of Assam, N.W.F.P., Orissa and Sind Rs. 66,000 per annum. (The schedule provides for allowances for equipment and travelling, and during terms of office, for customs privileges &c., for the G-G. and the Governor).

**Administration:**—The Statutory provisions regarding a Council of Ministers and their tenure are the same as those of the Federal Council of Ministers. But there are no Reserved Subjects in the Provinces. The special responsibilities of the Governor are the same as those of the Governor-General except those of safe-guarding the financial stability and credit of the Federal Government, of preventing action relating to discriminatory or penal treatment (which is a federal subject), and of securing due administration of reserved subjects. In addition, the Governor has special responsibility for the securing of the execution of the orders of the Governor-General issued in his discretion. The Governor of Central Provinces and Berar has special responsibility for securing that a reasonable share of the revenues is spent for the benefit of Berar. A Governor of a Province has a special responsibility regarding administration of excluded areas, or of functions as Agent for the Governor-General. The Governor of Sind has a special responsibility regarding the Llyod Barrage and Canal schemes. The

same provision as in the case of the Governor-General regarding the laying of the Instrument of Instructions is made in the case of the Governor also. There is similar provision for the Advocate-General of the Province, appointed by the Governor as in the case of the Advocate-General of India.

**Special Provisions:—** The Governor shall exercise his individual judgment in making, amending, and approving by virtue of powers vested in him, regulations and orders relating to the police other than those affecting the organisation and discipline of that force. ( S. 56 ) If it appears to the Governor that the peace or tranquillity is threatened by attempt of conspiracy to overthrow the Government, the Governor may direct that his functions shall, to that extent, be exercised in his discretion. During such a period, when he is acting in his discretion, the Governor may authorise an official to speak and take part in the Legislature. The Governor may make rules that no records or ( S. 57 ) information relating to the sources of information regarding conspiracy or preparation shall be disclosed ( 1 ) by a member of the Police to another member of the Police except under the directions of the Commissioner or I. G. P., or to any other person except under directions of the Governor, ( 2 ) by any other official to any person except in accordance with the Governor's directions. The provisions relating to conduct of business in the Province are the same as those for the Federal Government, and the Governor can act in the same manner as the Governor-General.

**The Provincial Legislature:—**The Provinces of Madras, Bombay, Bengal, United Provinces, Bihar, and Assam shall

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have two Chambers, and the other Provinces one. The legislative procedure, constitution of the legislatures, the legislative powers of the Governor, and the provisions in the case of failure of the constitutional machinery in the Province, are similar to those noted above in respect of the Federation. No Proclamation under the last of these items can be issued by the Governor without the concurrence of the Governor-General.

**Excluded Areas :—**Specified areas may be excluded, either partly or wholly, from the operation of the Act or part thereof, for which the Governor may make Regulations. The Regulations will not have legal force unless assented to by the Governor-General.

**Chief Commissioner's Provinces :—**These shall be administered by the G.-G. through a Chief Commissioner. These Provinces are British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andamans and Nicobar Islands, and Pant Piploda. Aden shall cease to be a part of India.

## CHAPTER II

### LEGISLATIVE & ADMINISTRATIVE JURISDICTION.

#### LEGISLATIVE POWERS.

**Jurisdiction:**—The Federal Legislature may make laws for British India and Federated States, subject to the Act and the Instrument of Accession. The extra-territorial operation of any Federal Law, shall not be ground for invalidating that Law in so far as it relates to British subjects and servants of the Crown in India, to British subjects of Indian domicile wherever they may be, or to persons on ships or air-craft registered in British India or Federated States, or to subjects of Federated States in matters included by the Instrument of Accession. This includes laws for the regulation and discipline of Naval,

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The distribution of powers is an essential feature of federalism.....

.....The powers given to the nation form in effect so many limitations upon the authority of the separate States, and as it is not intended that the Central government should have the opportunity of encroaching upon the rights retained by the States, its sphere of action necessarily becomes the object of rigorous definition.....

.....The Constitution of the United States in substance reserves to the separate States all powers not expressly conferred upon the national government.....In this matter, the Swiss Constitution follows that of the United States. The Constitution of the Australian Commonwealth follows in effect the example of the United States. The powers reserved to the Parliaments of the States are indefinite.

## LEGISLATIVE & ADMINISTRATIVE JURISDICTION

Military, and Air Forces raised in British India, to persons attached thereto wherever they may be. ( S. 99 )

**Legislative Lists :—**The Federal Legislature has exclusive jurisdiction to make laws relating to matters enumerated in the Federal Legislative List ( vide the seventh Schedule ).

The Federal Legislature, and a Provincial Legislature also, have power to make laws relating to matters enumerated in the Concurrent Legislative List.

The Provincial Legislature has exclusive jurisdiction to make laws for a Province with respect to any of the matters enumerated in the Provincial Legislative List.

The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof. ( S. 100 ) The Instrument of Accession will govern the competency of the Federal Legislature in legislating for States. ( S. 101 )

**Emergency Legislation:—** The Federal Legislature, may, however, exercise legislative powers with the previous sanction of the Governor-General, for Bills even in respect of a Province, if the Governor-General has in his discretion, declared by Proclamation that a grave emergency exists threatening the security of India, whether by War or internal disturbance. This power, however, lasts only while the emergency lasts, and laws enacted by the Federal Legislature in exercise of this power shall cease to have effect on expiry of six months after the Proclamation has ceased to operate. If any provision of a Provincial Law, which the Provincial Legislature has power to make, is



repugnant to any provision of a Federal Law, which the Federal Legislature has, under this emergency, power to make, the Federal Law will prevail whether passed before or after the Provincial Law, but the Provincial Law will be void only so long as the Federal Law continues to have effect. The Proclamation shall be forthwith communicated to the Secretary of State who shall lay it before each House of Parliament and shall have operation only for six months unless approved by Parliament before the expiration of that period. (S. 102)

The Federal Legislature has got power to legislate for two or more Provinces if they consent. In such cases, the Provincial Legislatures have got power to amend or repeal such Act if it does not suit them.

The Governor-General in his discretion has got residuary powers for empowering the Federal or Provincial Legislature to enact a Law regarding any subject in the lists (vide Schedule), or to impose any tax which the Federal or Provincial Executive shall extend to the administration of the area under them.

The Federal Legislature may make the Naval Discipline Act applicable to Indian Naval Forces with suitable modifications if necessary. The Naval Discipline Act shall, without modification, apply to any part of the Indian Navy deputed to be under the Admiralty.

The Federal Legislature can legislate in matters giving effect to International agreements only with the consent of the Governor or Ruler of a State as may be, if the Law is to affect a Province or a State. (S. 106)

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In the case of inconsistency between Federal Laws and Provincial Laws, the Federal Laws shall prevail. (Section 107).

**Restrictions on Legislative Powers :—**The previous sanction of the Governor-General is required for introducing Bills in the Federal Legislature and also in the Provincial Legislatures on some matters, e. g., repealing or amending Acts of Parliament, Governor or Governor-General's Act, affecting criminal proceedings against European residents etc. (Section 108). The power of the Parliament to legislate for British India remains unaffected, and the Federal and Provincial Legislatures cannot pass Laws affecting the Sovereignty of the Crown, Succession to the Crown, Army Act, Air Force Act, Naval Discipline Act, Prize-Courts, Orders-in-Council, etc., (Section 110).

✓ **Provision regarding Discrimination:—**A British subject domiciled in the United Kingdom is exempt from the operation of Federal or Provincial Law imposing any restriction of right of entry into British India or any disability regarding travel, residence, holding of property etc. by reference to place of birth, race, or descent. But this exemption does not prevail where a similar disability is imposed on Indians by the law of the United Kingdom. Quarantine regulations are not discriminatory regulations for this purpose, nor are rules governing deportation of undesirable persons. The Governor-General or Governor may suspend the provision against discriminations in view of grave menace to tranquillity, or to combat crimes of violence.

Discriminations in taxation against British subjects domiciled in, or against companies incorporated in, the United Kingdom or Burma, or against ships registered in British India, or against air-craft, are forbidden. British Companies will be treated on the same lines as Indian companies in the matter of subsidies, bounties, &c. These are, however, subject to reciprocity by the laws of the United Kingdom. This exemption may be taken away after a Convention between the Government in the United Kingdom and the Federal Government meets after the establishment of the Federation, and settles on similarity of treatments to British subjects domiciled in India, and to Companies incorporated there, and after the necessary legislation is passed thereon. The previous sanction of the Governor-General or Governor is necessary, for Federal or Provincial legislation respectively, providing for the laying down of professional qualifications for the exercise of professions or for imposing any disability or restriction in connection therewith. Such Bills should be reserved for Royal Assent or the Governor-General's consideration as the case may be. Such previous sanction shall not be given if it affects persons who were already lawfully practising a profession, except when public interests require any special debarring. Such regulations shall be published at least four months before they are expressed to come into operation. If within two months after the publication thereof, complaint is made that the regulations will operate unfairly against any class of persons, and if the Governor-General or the Governor, to whom the complaint is made considers it to be well-founded, the Governor-General or Governor, may, by public notification, disallow the regulations.

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**Medical Qualifications:**—A British subject domiciled in the United Kingdom or India, who is, or is entitled to be, registered in the United Kingdom by virtue of a diploma granted in the United Kingdom, shall not be excluded from practising medicine, surgery or mid-wifery by any Federal or Provincial law except on the ground that the diploma does not furnish sufficient guarantee of his possessing the requisite knowledge for such practice. He shall not be so excluded unless the law provides that no proposal for such exclusion shall be operative until the expiration of twelve months after notice of the G-G. to the University or body granting the diploma, and further provides that the proposal shall be inoperative if the Privy Council, on enquiry, decides that the diploma furnishes a sufficient guarantee of knowledge. For this purpose, if the University or body granting the diploma, or any British subject holding the diploma, feels aggrieved by a proposal for exclusion, such body or person may apply to the Privy Council, which, after giving an opportunity to the necessary parties in British India and the United Kingdom to tender evidence and written representations, shall determine whether the diploma is a sufficient guarantee for possession of knowledge and skill for medical practice.

The aforesaid provision in the previous paragraph is subject to the condition that British subjects domiciled in India holding a medical diploma granted after examination in British India, shall not be excluded from practice and registration in the United Kingdom except on the ground that the diploma is not a sufficient guarantee of possession of knowledge and skill; the provision is also subject to the further condition that there shall be a

reference to the Privy Council for deciding about the sufficiency of the diploma in such cases.

A medical practitioner entitled to practise in British India by virtue of a diploma granted in the United Kingdom, or by virtue of a diploma granted in British India, shall not be subjected to disability or restrictions to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

This shall not affect the power of any authority in the United Kingdom or in British India to suspend or debar a practitioner on the ground of misconduct. 'Diploma' includes any certificate, degree, or fellowship granted to persons passing examinations.

#### ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION, PROVINCES, AND STATES.

**Administration:**—The executive authority of every Province and Federal State shall be so exercised as to secure respect for Federal laws applicable to the Province or State. Regard shall be had to the interests of the Province or State in the exercise of the authority of the Federation (S. 122). The Governor-General shall require the Governors to discharge certain functions as his Agents in relation to defence, ecclesiastical affairs, external affairs and tribal areas. The Governor-General may entrust functions relating to Federal matters to Provincial Government or the Ruler of a Federated State with their consent. A Federal law may confer powers and impose duties on the officers of the Provincial Government or the Federated State. The Federation shall pay the costs for such functions. If the

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parties do not agree as to the costs, an arbitrator appointed by the Chief Justice may decide the amount of such extra costs (S. 124). With respect to the administration of Federal laws in States, agreements may be made with the Rulers of Federated States, and shall be so made if so provided by the Instrument of Accession, in which, provision shall also be made for inspection, if necessary, regarding the administration of such laws and for the issue of directions by the G-G (S. 125). The executive authority of a Province shall not impede the exercise of Federal executive authority which can give necessary directions to a Province among others for the carrying into execution of the Federal laws relating to matters specified in the Concurrent Legislative List. A Bill relating thereto shall not be introduced in the Federal Legislature without the previous consent of the Governor-General. Directions shall be given for the construction and maintenance of communications of military importance. The Federation had full power regarding construction and maintenance of communications of strategic importance. If the Governor-General thinks that effect has not been given to his directions, he may issue further directions. The Governor-General may also issue orders to Governors as to the manner of the exercise of executive authority for preventing grave menace to the peace or tranquillity of any part of India. The Federation may ask the Province to transfer land or to acquire land for the Federation on the Federation paying the expenses. Disputes as to the terms of transfer may be settled by an arbitrator appointed by the Chief Justice of India. The Federated State shall exercise its executive authority so as not to impede the Federal authority exercisable in a State. Failure to fulfil such obligations may be met by the

issue of fresh directions by the Governor-General to the State on considering the Ruler's representations, if any. Differences as to the exercisability of a Federal law in a State, shall be settled by the Federal Court (S. 128).

**Broadcasting :—**The Federation shall not unreasonably refuse to entrust a Province or Federated State with functions regarding the construction and use of transmitters and levying fees therefor. But the Province or State cannot interfere with Federal control over constructions made by the Federation. The Federation cannot impose conditions relating to the matter broadcast by a Province or Ruler, except that the Governor-General can interfere to prevent grave menace to peace or tranquillity after the due administration of Reserved Subjects, tribal areas and for the exercise of his special responsibilities. The G.-G. shall decide disputes between the Federal Government and the Provinces and States regarding broadcasting.

**Interference with Water Supplies :—**The Province or Ruler of a State may complain to the Governor-General as to the interference with water supplies by another Province or State. The Governor-General shall appoint a Commission who shall report after inquiry. The G.-G. shall announce the decision after the consideration of the Report. Before such decision is given, the Province or State may request the G-G to refer the matter to His Majesty in Council for decision. No law shall be passed repugnant to the decision of the G-G or His Majesty, as the case may be. The decision shall be duly given effect to. Expenses may also be decreed, and they may be enforced like an order of the Federal Court. Similar provisions may apply in the case of interference with water supplies of Chief

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**Commissioner's Provinces.** The jurisdiction of Courts in these matters is excluded. The Ruler of a Federated State may exclude, by the Instrument of Accession, the application of the provisions regarding interference with water supply in relation to his State. (S. 134)

**Inter-Provincial Co-operation:**—His Majesty may, on representation from the Governor-General, establish an Inter-Provincial Council with facilities for the States to participate in the work, for settling inter-Provincial disputes, for investigating subjects of common interest and making recommendations for better coordination of policy and action in relation thereto.

### FINANCE, PROPERTY, CONTRACTS AND SUITS.

**Finance:**—Distribution of Revenue between the Federation and Federal Units:—

The Federation shall levy and collect duties in respect of succession to property other than agricultural land, Stamp duties mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by Railway or air, and taxes on Railway fares and freights. The net proceeds except proceeds attributable to Chief Commissioners' Provinces, shall be assigned and distributed among the Provinces and States. (S. 137) Taxes on income shall be levied and collected by the Federation; and a prescribed part of the net proceeds except those attributable to Chief Commissioners' Provinces or in respect of Federal emoluments, shall not form part of the Federal revenues, but shall be assigned and distributed among the Provinces and the Federated States. The percentage originally fixed shall be continued. The Federal Legislature may levy a



a surcharge for being available for the Federal revenues. Out of the moneys assigned by the Province, the Federation may retain in each year of a prescribed period a certain sum prescribed, and in each year of a further prescribed period a reduced amount at making a sliding reduction in each year that the amount to be retained in the last year of the period may be equal to the amount of each such annual reduction. The periods shall not be reduced by order in Council. The Governor-General may, in consultation with the Representatives of the Federal, Provincial and State interests, extend the duration of the second prescribed period to enable the Federation to retain in any year the same amount as in the previous year during that second period, i. e. without the reduction according to the sliding scale. When surcharge is imposed by the Federal Legislature, States in which income-tax is not levied, shall pay a contribution to the Federation equal to the net proceeds which would have accrued if the surcharge were leviable in the State Federal emoluments mean emoluments and pensions payable by the Federation or the Federal Railway Authority on which income-tax is chargeable. (S 138)

Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed after the establishment of Federation. Any Federal law for the levy of corporation tax shall make provision enabling the Ruler of any Federated State to have the option of paying the contribution to the Federal revenues in lieu of the Corporation tax if he is unwilling to levy the tax in the State. The contribution shall be equal to the net proceeds which would have accrued if the tax was levied.

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The Ruler shall requisition information to be supplied to the Auditor-General to enable him to determine the amount of contribution. The Ruler may appeal to the Federal Court if dissatisfied with the amount of contribution in any financial year. The decision of the Federal Court shall be final ie. non-appealable. (S. 139) Salt duties, excise duties and export duties shall be levied and collected by the Federation. The Federal Act may provide for the distribution to Provinces or States to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty on principles formulated in that Act. One-half or greater proportion, as His Majesty in Council may determine, of the net proceeds of export duty on jute or jute products shall be assigned to jute-growing Provinces or Federated States in proportion to the amounts of jute grown therein. (S. 141) The previous sanction of the Governor-General is required for Bills affecting taxation in which the Provinces are interested, or affecting the provisions and principles of distribution between the Provinces and States, or varying the meaning of the expression "Agricultural Income". Before giving sanction, the G.-G. shall also consider other avenues of taxation if any, and the remedies for balancing the Federal Budget. (S. 141) His Majesty in Council may fix subventions from the Federal Revenues to the Provinces. Except in the case of the North-West Frontier Province, the amount of subvention shall not be increased by a subsequent order unless an address for increase is presented by the Federal Legislature to the Governor-General for submission to His Majesty. The duties or taxes levied in any Federated State independently of the provision of the Federal Legislature, will not be subject to any of the

aforesaid provisions. Any taxes, cesses or fees levied by any Provincial Government, Municipality or any other local body under the laws existing on or before the 1st January 1935, will continue to operate until provision to the contrary is made by the Federation. Net proceeds means proceeds minus the cost of collection as ascertained by the Auditor-General of India, and his decision will be final. An Act of the Legislature assigning proceeds or contributions, may provide for the manner of calculation for financial adjustments and for the ancillary and incidental matters.

**The Crown and the States :—**The Federation shall pay the expenses of the Crown in connection with the functions of the Crown in its relations with the Indian States including the making of payments of customary allowances to members of the family or servants of any former Ruler of any territories in India. All cash contributions and payments in respect of loans from any Indian State shall be received by His Majesty and may be placed by His Majesty at the disposal of the Federation. Nothing shall derogate from His Majesty's rights to remit wholly or in part any contributions or payments. His Majesty may agree to remit any contributions of a Federated State over a period not exceeding twenty years from the date of Accession. But the remission shall not take effect until the Provinces have begun to receive monies from taxes on income. Remission shall be complete before the expiration of twenty years from the date of Accession of that State, or before the expiration of the second prescribed period mentioned above in relation to distribution of taxes on income, whichever occurs first. In the the case of a voluntary cession of a territory before

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the passing of the Act by a Federated State, in return for specific military guarantees or in return for discharge from obligations to provide military assistance to the Crown, His Majesty may direct the payment of reasonable sums after taking into account the value of any privilege or immunity to that State, subject to its waiving the said guarantees. No contribution shall be remitted save in so far as it exceeds the value of any privileges or immunity enjoyed by the State. If the liability for contributions has been discharged by payment of capital sums, they may be returned in instalments or otherwise, as His Majesty may direct. Such repayments shall be deemed to be remissions. Cash contribution includes periodical contributions in acknowledgment of the Sezerainty of His Majesty in return for aid or protection, contributions in commutation of an obligation to provide military assistance, or in return for special military forces or police, or expenses of an agent, periodical contributions on restoration of a State or a territory, and periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse. Privilege or immunity refers to rights of levying sea customs, production and sale of untaxed salt, sums receivable on account of a surrender of a right of customs duties, and of production of salt and other commodities or in lieu of grants of free salt; it further includes the annual value to the Ruler of any privilege or territory granted in respect of any such right. Privileges in respect of free service stamps, free carriage of State mails, right to issue currency notes, right to get freedom from customs duties on goods imported by sea and transported in bond to the State, also come under this category. For the acceptance by His Majesty of

the Instrument of Accession of any State, all particulars as regards privileges or immunity will have to be given in the Instrument (Vide Section 147). Section 148 provides that any payments made under Section 147 and payments made heretofore to any State by the G-G. in council or the Local Government shall be charged on the revenues of the Federation or on the revenues of the corresponding Province as the case may be. The value of privileges and immunities will be set off against the share of taxes etc., assigned to Federated States.

#### MISCELLANEOUS FINANCIAL PROVISIONS.

No burden shall be imposed on the revenue of the Federation or the Provinces except for the purposes of India. The Federation or a Province may make grants for a purpose though it is not within the Legislative competence of the Federal or Provincial Legislature. The Governor-General or the Governor exercising his individual judgment may make rules for the revenues of the Federation or of the Province respectively being paid to the public account, and for custody and withdrawals thereof. The Governor-General shall exercise his discretion in the appointment, removal, approval, and fixing of salaries and tenure of office of the Governor, Deputy Governor and officiating Governor of the Reserve Bank, and while acting in super-session of the Central Board of the Bank and in the liquidation of the Bank. The Governor-General will exercise his individual judgment in nominating and removing the Directors of the Reserve Bank. The previous sanction of the Governor-General acting in his discretion will be necessary for Bills affecting the constitution or functions of the Bank or its powers of coinage and currency. Property

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vested in His Majesty for the purpose of the Federation can be exempt from all taxes imposed by a State or a Province. But if the said property was subject to any tax before the Act, it will continue to be so until a contrary measure is passed. The Government of a Province and the Ruler of a Federated State shall be free from Federal taxation with respect to lands and buildings situated in British India or income accruing or received in British India. The trade or business and incomes therefrom of any Province or a Federated State outside their territorial jurisdiction, shall not be exempt from Federal taxation nor the personal property of any Ruler including personal income and lands and buildings. The right of the Ruler of any State with respect to exemption from taxation in the matter of Government securities shall be preserved if the right existed before or at the commencement of this Act. The expenses of any Court or Commission, or any pension payable for Indian services under the Crown, shall be adjusted after a consideration of the proportion of the services rendered to the Province or the Federation; and the contribution of each shall be charged on the respective revenues. In default of agreement regarding the contribution, an arbitrator appointed by the Chief Justice of India shall decide the issue. The Secretary of State shall get money from time to time from the Federation and the Provinces to pay off his liabilities and pensions payable in the United Kingdom on behalf of the Federation or the Provinces. His Majesty in Council may make provision for regulating the relations of the monetary systems of Burma and India, and for granting relief from any Federal tax on income, in respect of income taxed or taxable in Burma. Provision may be made by His Majesty

by Order in Council regarding customs duties on Indo-Burma trade and for safe-guarding the economic interests of Burma during the period immediately after separation from India.

**Borrowing:**— The powers of borrowing vested in the Secretary of State in Council shall cease from the introduction of Provincial Autonomy. But this does not affect the powers, under the Act, of the Secretary of State for raising Sterling Loans. Both the Federation and the Provinces have borrowing powers within limits fixed by the Federal Legislature and the Provincial Legislature respectively. The Federation may make loans to the Provinces and may give guarantee for Provincial Loans. A Province may not borrow outside India without the consent of the Federation. A Province may not borrow without such consent if there is still any outstandings in the loan due to the Federation, if any, or under any guarantee given on its behalf by the Federation. Consent, guarantee and loan shall not be unreasonably refused or withheld by the Federation. The G-G's decision in disputes relating thereto shall be final. Within the limits fixed by the Act, the Federation may give loans to, or guarantee loans raised by, any Federated State. Provision is made for the application of the Colonial Stock Acts 1877-1900 to the Stocks issued by the Federation.

**Audit And Accounts:**— There shall be an Auditor-General of India appointed by His Majesty. He shall be removed from office on the same grounds and in like manner as a Federal Court Judge (See later under the heading "The Judicature"). He is ineligible for any further office under the Crown in India. He shall act according to the rules of the order in Council and the modifications thereof made by the Legislature. A Bill

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regarding the same shall not be introduced without the previous sanction of the Governor-General. Provision is made for the appointment of Provincial Auditors-General if after two years from the introduction of Provincial Autonomy, the Provincial Legislature passes an Act for such appointment. A Provincial Auditor-General is eligible for appointment as Auditor-General of India, but not for any other office. Power is given to the Auditor-General of India to give directions as to the keeping of Federal and Provincial accounts which shall be duly given effect to. The Audit Reports shall be laid before the respective Legislature.

There shall be an Auditor of the Indian Home Accounts appointed by the Governor-General. His removal shall be in like manner and on like grounds as a Judge of the Federal Court. He shall exercise powers in relation to transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority or of a Province. His Report shall be included in the Report of the Auditor-General of India or of the Provincial Auditor-General according as it affects the Federation or the Province. He shall be subject to the general superintendence of the Auditor-General of India. Audit of accounts relating to the discharge of the functions of the Crown in relation to Indian States, shall be done by the Auditor-General of India or by the Auditor of Indian Home Accounts under the former's general superintendence in respect of such transactions in the United Kingdom. The Auditor-General shall submit to the Secretary of State an annual report of such accounts of transactions relating thereto in India and in England.

**Property, Contracts, Liabilities and Suits:—** Property situated in a Province and hitherto used for Provincial



purposes, vest in His Majesty for the purposes of the Government of that Province. If used for purposes which thereafter will be Federal, or for the exercise of functions in relation to State purposes, or intended to be so used, the property will vest in the Crown for the Federation or for the State relations respectively. The property outside India vests in the Crown for the Federation. If the property is used for the Department of the Secretary of State in Council, then it vests in His Majesty's Government and is to be under the management of the Commissioner for Works; and the sale of such lands shall take place only with the consent of the Governor-General. All other property shall vest in His Majesty for the Federation, or for the exercise of functions in relation to States, or for the Government of a Province according to the respective purposes for which the property was held before the introduction of Provincial Autonomy. Property accruing by escheat or lapse or as bona vacantia in a Province shall vest in His Majesty for a Province. Otherwise, it will vest in His Majesty for the Federation. Property in the possession of a Government will vest in the Federation or the Province according to the use to which it was put at the date when the right accrued. The authority of the Federation in the Province shall extend to the sale, grant, disposition, acquisition, and purchase of property and the making of contracts. But the official residence of the Governor-General or the Governor cannot be sold or charged except with the concurrence of the Governor-General or the Governor respectively. Property acquired for the Federation, or for a Province, or for the exercise of functions in relation to States, shall vest in His Majesty for those purposes. Neither the G-G nor the Governor, nor the Secretary of State, nor

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any officer executing or making contracts on behalf of Government shall thereby incur any personal liability.

**Suits:—**The Federation may sue or be sued by the name of the Federation of India, and the Provincial Government by the name of the Province. Where the Federation, the Federal Railway Authority or a Province sue or are sued in the United Kingdom, service of proceedings may be effected on the High Commissioner or any other representative of the Federation, Railway Authority or Province. Existing contracts of the Secretary of State made before the establishment of Provincial Autonomy shall devolve on a Province if made for the Province, and in other cases on the Federation. Liabilities in respect of loans, guarantees and other financial obligations of the Secretary of State in Council, existing at the time of introduction of Provincial Autonomy and secured on the revenues of India, shall be liabilities of the Federation secured on the revenues of the Federation and of all the Provinces; enactments relating thereto shall continue to have effect. No deduction in respect of taxation under any existing or future Indian or Provincial Law shall be made from any payment of principal or interest in respect of such securities where interest is payable in sterling. Liabilities of Local Government secured on Provincial revenues shall continue to be the liabilities of the Province with that security. Legal proceedings which might have been brought against the Secretary of State in Council, but for this Act, arising before the establishment of Provincial Autonomy, or under any statute or contract passed or made before that date, shall be brought against the Federation or Province according to the subject-matter of the suit. Costs, damages etc.

in that connection shall be paid out of the Federal or Provincial revenues as the case may be. At the option of the person by whom the proceedings are brought, they may be filed against the Secretary of State. Damages and costs in such cases may be paid out of such revenues as the Secretary of State may direct. The Secretary of State may make a similar direction that costs etc, shall be paid out of the revenues of the Federation or the Province in suits brought against him in the United Kingdom arising out of contracts made in respect of Provincial affairs after the introduction of Provincial Autonomy. There is no liability on the British Exchequer. In legal proceedings pending in India or the United Kingdom against the Secretary of State in Council on the date of the introduction of Provincial Autonomy, the Secretary of State shall be substituted for the Secretary of State in Council. Contracts in connection with functions of the Crown in its relation with Indian States before the introduction of Provincial Autonomy, shall, after that date, have effect as if they have been made on behalf of His Majesty; and proceedings arising therefrom shall be brought by or against the Secretary of State. In proceedings pending on that date by or against the Secretary of State in Council, whether in the United Kingdom or in India, the Secretary of State shall be substituted for the Secretary of State in Council. Contracts made in connection with the said functions of the Crown in relation to States, shall be enforceable by or against the Secretary of State. Costs and damages to be paid, shall be deemed to be sums required for the discharge of the functions of the Crown on that behalf. The sums received by the Secretary of State by virtue of such proceedings, shall be paid or credited to the Federation.

## CHAPTER III

### RAILWAYS, JUDICATURE, SERVICES ETC.

#### THE FEDERAL RAILWAY AUTHORITY

**Functions:**—The Executive Authority of the Federation in respect of regulation, construction, maintenance and operation of Railways, shall be exercised by a Federal Railway Authority. Subject to the provisions of any Federal, Provincial or existing Indian Law or Law of any Federated State, the Authority shall make arrangements for all undertakings by the Railways. The Federal Government may order its officers to hold inquiries into causes of Railway accidents, and perform other functions for the securing of the safety of the public using the Railways.

**Composition:**—Not less than three-seventh of the members of the Authority shall be appointed by the Governor-General in his discretion, which shall also be exercised by him in appointing a member of the Authority as the President. The qualifications and conditions of service of the members of the Authority are prescribed in the VIII Schedule of the Act ( Vide extracts below ).

**Directions and Principles :**—The Authority shall act on business principles having regard to the interests of agriculture, industry, commerce, finance and the general public. They shall be guided by the instructions of the Federal Government on questions of policy. The Authority shall exercise its functions in their discretion as if they were

special responsibilities, or exercise individual judgment in the very same way as the Governor-General would act in those matters where special responsibility or discretion or individual judgment is vested in him. The Governor-General's directions to the Authority in matters which involve his special responsibility or require his discretion or exercise of individual judgment, shall be given effect to by the Authority. The Governor-General may make rules for the convenient conduct of business between the Railway Authority and the Federal Government. The Chief Executive Officer of the Authority shall transmit, when required, information to the Federal Government on Railway business and shall bring to the notice of the Governor-General Railway matters involving his special responsibility. Land may be compulsorily acquired by the Federal Government for the Authority. The Authority shall not acquire or dispose off land except under regulations made by the Federal Government. Contracts made by the Authority shall not be enforceable by or against the Federation. The Authority may sue and be sued as a Company. The Authority may make working agreements with Indian States.

**Finance:—**The Authority shall maintain and control a Fund known as the Railway Fund, out of which expenditure may be incurred for the discharge of their functions, e. g. for working expenses, payments under contracts, payments of pensions and contributions, repaying to the Federation pension contributions, provision for maintenance, improvements and depreciation, payment to the Federation of interest due &c. Surpluses shall be apportioned between the Federation and the Authority according to any settled

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scheme. Provision from the Federation for the Authority shall be shown in the estimate of expenditure laid before the Legislature. For the obligations of the Railway Authority to the Federation, the Authority shall pay interest to the Federation and make payments in reduction of the principal. The Authority shall repay to the Federation sums defrayed by the Federation on account of damages caused &c. in proceedings against the Federation or the Secretary of State in respect of Indian Railways. The Authority shall pay to Provinces or Indian States expenses incurred by them for the Railway Police. The Authority shall invest moneys in the Railway Fund or any Provident Fund. Except for expenditure chargeable against that particular Fund, the Authority cannot demand the transfer to them, for investment, of the Railway Depreciation Fund, Reserve Fund or Provident Fund held by the Governor-General in Council. The annual accounts of the Authority shall be audited by the Auditor-General of India, and an Annual Report shall be published by the Authority.

**Railway Rates Committee :—**The Governor-General may appoint a Railway Rates Committee to give advice to the Authority regarding disputes as to rates and traffic facilities. Except on the recommendation of the Governor-General, bills and amendments for regulating rates and fares in Railways shall not be introduced in the Federal Legislature. The Railway Authority and the Federated States should afford mutual traffic facilities and avoid undue discrimination by undue preference or uneconomic competition. Complaints in such matters may be made to the Railway Tribunal by either party. The Governor-General

in his discretion shall make rules for the construction and reconstruction of Railways. Except where the Governor-General certifies that for reasons connected with Defence, effect should or should not be given to a proposal, all other proposals to which objection is taken shall be left to the decision of the Railway Tribunal.

**Railway Tribunal:**—The Railway Tribunal shall consist of a President and two others to be selected by the Governor-General from a panel of eight persons appointed by him in his discretion, being persons with Railway administrative or business experience. The President shall be a Federal Court Judge appointed by the Governor-General in consultation with the Chief Justice. He shall hold office for five years and shall be eligible for reappointment for a further period up to five years. The President shall cease to be such when he ceases to be a Federal Judge. The Authority and the Federated States shall give effect to the orders of the Tribunal. An appeal lies to the Federal Court on questions of Law, but there is no further appeal from the Federal Court. The Tribunal or the Federal Court, may, on application, review its own previous order in view of an alteration in circumstances. The President shall make the necessary rules for proceedings before the Tribunal. No other Court has jurisdiction in matters which are cognisable by the Tribunal (S. 196). Provision is made for the right of Railway Companies, to have recourse to arbitration in respect of disputes if their contracts so provide. His Majesty's Representative may entrust to the Authority any functions relating to the Railways in un-Federated States. The powers of the Secretary of State with regard to the appointment of Directors and

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Deputy Directors for Indian Railway Companies, shall be exercised by the Governor-General in his discretion in consultation with the Authority.

### THE JUDICATURE.

#### *The Federal Court*

**Constitution:**—The Federal Court shall consist of a Chief Justice of India and not more than six Puisne Judges, which number shall not be exceeded unless an address is presented by the Federal Legislature for an increase. A Judge is appointed by His Majesty by Warrant under the Royal Sign Manual. They can serve up to the age of sixty-five. They may be removed on the Report of the Privy Council on the ground of misbehaviour or bodily or mental infirmity. A Federal Judge should have been a High Court Judge in British India or a Federated State for five years, or a Barrister, Scottish Advocate or High Court Pleader for ten years. The Chief Justice must be a person who was, when first appointed to Judicial office, a Barrister, Advocate, or Pleader, and had fifteen years' standing at the Bar; period spent in holding any Judicial Office will be included in calculating the period of standing for this purpose. (S. 200) Temporary appointments as Chief Justice may be made by the Governor-General from among the Federal Judges till the person appointed by His Majesty takes charge. The Court shall sit at Delhi and such other places appointed by the Chief Justice with the approval of the Governor-General.

**Jurisdiction:**—The Court has original jurisdiction on questions of legal right between the Federation, the



Provinces and any of the Federated States. In the case of a State, the dispute must concern the interpretation of the Act or Order in Council or the Legislative or Executive Authority of the Federation according to the Instrument of Accession, or the dispute must arise on the administration in a State of a Law or under an agreement between a State and the Federation giving jurisdiction to the Court in any said dispute. If the jurisdiction is expressly excluded, the Court cannot entertain the dispute. On a certificate by the High Court that the dispute involves a substantial question of Law, the Federal Court has appellate jurisdiction from High Courts in British India. The Federal Legislature can enlarge the Appellate jurisdiction of the Court ( Sections 204 to 206 ). On practically analogous grounds as the Appellate jurisdiction from decisions of British Indian High Courts, the Federal Court has appellate jurisdiction from High Courts in Federated States. An appeal lies to the King in Council from the decisions of the Federal Court in its original jurisdiction described above. In other matters, leave of the Court or of the King in Council is required for appeals to His Majesty in Council. ( Ss. 207 and 208 ) Provision is made for the enforcement of the Decrees and orders of the Federal Court throughout India and of orders as to discovery and protection of documents and investigation and punishment of any Court etc. In dealing with the High Courts in a Federated State, the form of communication for these matters shall be letters of request to the Ruler of the State who shall cause such communication as may be necessary to be made to the State High Court. The Law declared by the Federal Court and the Privy Council is to be binding on all Courts. ( Sections 210 to 212 ) On important questions

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of Law, the Governor-General has power to consult the Federal Court. The Federal Court, may, with the approval of the Governor-General acting in his discretion, make rules regarding legal practitioners, Court procedure, time of appeal, cause, fees, summary disposal of frivolous, vexatious and dilatory proceedings, and for constituting separate Division Benches. The Chief Justice has authority to constitute the Benches. Expenses of a Federal Court shall be a charge on the Federal Revenues. His Majesty, may, after communication with the Ruler of a Federated State, declare the High Court in that State to be a High Court for the aforesaid purposes.

### COURTS IN BRITISH INDIA

**Constitution:—**The existing High Courts and the Chief Courts and the Judicial Commissioner's Courts in N.W. Province and Sind, and any other Courts declared to be such or constituted hereafter, shall be High Courts for the purpose of this Act. The age-limit for High Court Judges is sixty years. The number of Judges shall be such as may be determined from time to time. The conditions of appointment and of continuance of service are the same as those for the Federal Judges. Besides the qualifications of standing at the Bar fixed for Federal Judges, a person shall also be eligible if he is a member of the I. C. S. for ten years, of which three years were spent as a District Judge, or if a person has served for five years in a Judicial office not inferior to that of a Subordinate Judge or a Small Cause Courts Judge. The Chief Justice must have been a Barrister or Scottish Advocate or High Court Pleader when first appointed to Judicial office or must have served for at least three years as High Court Judge. (Sections 219

and 220). Temporary appointments of Acting Chief Justice and Puisne Judges may be made by the Governor-General in his discretion. The Acting Chief Justice must be selected from one of the Judges of the Court. The Governor-General may appoint Additional Judges for any term not exceeding two years.

**Jurisdiction:—** The existing jurisdiction of the High Court shall continue subject to the Act and Order in Council. The High Court shall have administrative functions and superintendence in administrative matters over subordinate Courts including calling for returns, settling tables of fees, issuing rules of practice and prescribing forms of accounts. The High Court may transfer to itself from the subordinate courts cases involving questions of validity of any Federal Act or Provincial Act on the application of the Federal Advocate-General or Provincial Advocate-General respectively. Until otherwise provided, the High Court has no other jurisdiction in revenue matters. The expenses of the High Court shall be a charge on the Provincial revenues. His Majesty, may, if the Legislature of a Province present an Address in that behalf to the Governor of a Province for submission to His Majesty, constitute a new High Court or reconstitute or amalgamate existing High Courts for the Province. On agreement between the Governments concerned, His Majesty in Council may give a High Court extra-territorial jurisdiction to any area in British India outside the Province. (S. 230)

#### THE SERVICES OF THE CROWN

**Defence Services:—** The pay and allowances of the Commander-in-Chief are regulated by His Majesty in

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Council. His Majesty in Council may require that appointments to offices connected with Defence shall be made in any specified manner. Commissions may be granted by His Majesty to persons lawfully enlisted or enrolled in the Indian Naval, Military or Air Force. The Secretary of State has got control with respect to conditions of Service and possesses the power of hearing appeals as before the Constitution Act. The sons of persons who have served in India in the Military or Civil Service of the Crown have the same right to India Cadetships as heretofore.

**Civil Services:—**The tenure of office of persons employed in India in civil posts is during His Majesty's pleasure. Persons cannot be dismissed by any authority subordinate to that by which they were appointed. Except for dismissal or reduction due to conviction on a criminal charge, no person shall be dismissed or reduced in rank without being heard unless the competent authority records in writing the reasons for denying a hearing to the Officer. Appointments to the Federal Services shall be made by the Governor-General and to the Provincial Services by the Governor according to the conditions of service prescribed and to rules regarding right of appeal on punishment or censure, or on termination of appointment, or on interpretation of conditions, except when the order is passed by the Governor-General or the Governor. Similar rules shall apply to Railways, Customs, Post and Telegraph Services and officials of Courts. There may be special provisions as to the conditions of service of the Police Forces. The association of the Anglo-Indian community with the Railway Services and the Governor-General's instructions for securing to each community adequate representation therein,

shall weigh with the Federal Authority in making appointments. The Association of the Anglo-Indian community with the Customs, Postal and Telegraph Services shall be considered in framing rules for the appointments to those services. The rules for the Staff attached to the Federal Court shall be made by the Chief Justice of India with the approval of the Governor-General, while, for the Staff of a Federal High Court, the Chief Justice of the High Court may make rules with the approval of the Governor.

**Recruitment by Secretary of State:**—The Secretary of State has the power to recruit for the Indian Civil Service, the Indian Police Service and the Indian Medical Service (Civil). He may make recruitments for the purpose of securing suitable persons to fill civil posts for the functions which the Governor-General has to discharge in the exercise of his discretion. A statement of the appointments made by him shall be laid by the Secretary of State before Parliament every year. The Secretary of State, may, for securing efficiency, recruit persons for civil posts concerned with Irrigation. Reserved posts shall not be kept vacant for more than three months without the previous sanction of the Secretary of State. Postings shall be made by the Governor-General or the Governor. Rules regarding pay, leave, pension, etc. shall be made by the Secretary of State and orders regarding officers holding Reserved Posts shall be made by the Governor-General or the Governor exercising his individual judgment, who are also bound to hear appeals from such officers regarding any order affecting their conditions of Service. Only the Governor-General or the Governor has the right to pass an order of punishment or censure or any adverse order on any memorial; and

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against such order, there is an appeal to the Secretary of State. Compensations shall be paid by the Secretary of State to any Officer who is adversely affected by the Act. Similar provisions shall apply to persons appointed by the Secretary of State in Council before the commencement of Part III of the Act and to the Staff of the High Commissioner and the Auditor of Indian Home Accounts. Persons appointed before the commencement of Part III of the Act to the Staff of the High Commissioner, or of the Auditor, shall continue to be such and retain the conditions of service as before.

**Judicial Officers:**—The appointment of District Judges shall be made by the Governor in consultation with the High Court. For direct recruitment as a District Judge, a person must have at least five years' standing as a Barrister or Advocate of Scotland, or Pleader. District Judge includes Joint, Additional or Assistant District Judge, Small Cause Courts Judge, Chief Presidency Magistrate, Sessions Judge, Additional or Assistant Sessions Judge. For appointment to the Subordinate Judicial Service, a list of eligible candidates, shall, as a result of an examination, be submitted by the Public Services Commission to the Governor, who shall make the selection out of the list having regard to the claims of the different communities in the Province. The High Court has power regarding posting, promotion and leave of members of the Subordinate Judicial Service who have, however, a right of appeal to the Governor.

**Miscellaneous:**—Special provision is also made as to the Officers of the Political Department and for the protection of existing Officers of Central Service Class I, Central Service

Class II, Railway Service Class I, Railway Service Class II, and to Officers serving in or before 1924 in the Superior Services. The powers of the Secretary of State shall not be exercised by him regarding the Services except with the concurrence of his Advisers. The Secretary of State, the Governor-General or the Governor acting in his discretion, may declare the eligibility for office of certain persons who are not British Subjects eg. the Ruler or subject of a Federated State, or native of a Tribal area adjacent to India (S. 262). The Provinces and the Federation may join together for creating joint services.

#### "PUBLIC SERVICE COMMISSIONS.

**Composition:**—There shall be a Public Service Commission for the Federation and one for each of the Provinces. The Provinces may agree to have a Commission for a group of Provinces or for more than one Province. One-half of the members shall be persons who have held office for ten years under the Crown. The Chairman of the Federal Commission shall be appointed by the Governor-General and that of the Province by the Governor, who shall also make rules regarding the number of members, staff, etc. The Chairman of a Provincial Commission may become the Chairman of the Federal Commission or Chairman of any other Commission. The Chairman of the Federal Commission shall be ineligible for further appointment. The members of the Federal and Provincial Commissions are ineligible for any other posts without the consent of the Governor-General and Governor respectively. (S. 265)

**Functions:**—The Commissions shall hold examinations for recruitment to the Services and may be consulted

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on principles and methods of recruitment and promotion, disciplinary matters, claims, pensions, etc. The functions of the Public Service Commissions may be extended by the Legislature, but not to include anything affecting the Reserved Services except with the consent of the Secretary of State. Previous sanction of the Governor-General or the Governor is necessary for introducing Bills relating thereto. ✓

**General:**—Provision is made for indemnity for past acts of Public Servants, for protection of Public Servants against prosecutions and suits, for the defraying of costs of litigation incurred by Public Servants, out of the revenues if deemed fit, (Sections 270 and 271). Provision is also made for payment of pensions and for exemption of those pensions from taxation in India and for the several Family Pension Funds. Persons are not to be disqualified by sex for holding offices unless so specified by general or special order of the Secretary of State, or the Governor-General or the Governor, whoever is the competent authority for making the particular appointment.

### THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT.

**Advisers:**—The old India Council is replaced by a body of Advisers to the Secretary of State, not being less than three and not more than six in number. One-half of these should have served in India for ten years under the Crown and have not last ceased to serve in India more than two years before their appointment as Advisers. The tenure of membership is five years and they shall not be eligible for reappointment. An Adviser cannot be a



Member of Parliament during his tenure of Advisership. The salary shall be £1350 per annum, and persons with Indian domicile shall get £600 in addition. An Adviser may be removed by the Secretary of State if the Adviser is unfit to hold office by reason of infirmity. (S. 278) Accounts of the Secretary of State in Council with the Bank of England shall be transferred to the Secretary of State, and the Council of India shall be dissolved from that date.

**Organisation** —The expenses of the salary of the Secretary of State and his Department shall be paid out of moneys provided by Parliament, and the Federation shall pay into the Exchequer such contribution as may be agreed for the expenses incurred by the Secretary of State in the discharge of his duties on behalf of the Federation. The establishment of the Secretary of State in Council shall be transferred to the Secretary of State and contributions for their pensions, gratuities etc., for services so far rendered, shall be paid by the Federation. This applies to the Auditor of the Accounts of the Secretary of State in Council and his Staff. Provision is also made for the contribution from the Federation to the continuance of the usual subscription paid previously or payable by the Secretary of State in Council out of Indian revenues to the Regular Widows' Fund, the Elder Widows' Fund and the India Office Provident Fund to such extent as may be necessary.

#### MISCELLANEOUS AND GENERAL.

**The Crown and Indian States:**—Nothing in the Act affects the rights and obligations of the Crown in relation

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to any Indian State except in so far as a Federated State is affected by the Instrument of Accession of that State. (S. 285) The Governor-General, shall, on the request for assistance of His Majesty's Representative for relations with Indian States, cause the necessary armed forces to be employed for the due discharge of the functions. The net additional expenses, in connection with the employment of those forces, shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown. (S. 286). Arrangements may be made between the said Representative and the Governors of Provinces for the Governors and Provincial Staff to assist him in discharging his functions.

**Aden** :—S. 288 deals with the issuing of Order in Council for the separation of Aden from British India.

**New Provinces** :—Since the passing of the Act, Sind and Orissa have been constituted into separate Provinces. His Majesty, may, by order in Council, create a new Province, increase or diminish the area of a Province or alter the boundaries thereof.

**Franchise** :—His Majesty in Council may make provision with respect to the details of franchise and elections e. g. delimitation of territorial constituencies, qualifications of candidates and voters, the conduct of elections, election disputes, expenses, corrupt practices at elections etc.

## LEGAL MATTERS

**Existing Law** :—The existing law in India is to continue in force until altered or repealed. His Majesty, may, by order in Council, order the adaptation or modification of the

existing Indian law as may be deemed expedient to bring it into conformity with this Act, till a competent Legislature passes the necessary Law.

**Foreign Jurisdiction:—**It is open to His Majesty, in accepting the Instrument of Accession, to exclude any area in a Federated State from the authority of the Federal Executive or Legislature after previous notice to the Ruler; otherwise, such authority will extend to the Federated State by virtue of the Instrument of Accession. His Majesty may, later on, relinquish such exclusion. His Majesty may relinquish his jurisdiction in any State under the Foreign Jurisdiction Act-1890 after the Accession of a State becomes effective. (S. 294)

**Miscellaneous:—**The Governor-General has powers of suspension, remission or commutation of death-sentence passed by a British Indian Court. His Majesty, and by delegation, the Governor-General, have the prerogative of granting pardons, reprieves, respites and remissions of punishments. No member of the Federal or Provincial Legislature shall be a member of any Revenue Appellate Court.

The Governor has power to constitute tribunals in special matters as before. No Provincial Legislature or Government can pass Laws prohibiting or restricting internal trade, or impose discriminatory tax on manufactures. British Subjects domiciled in India are not to be subjected to disability in holding or acquiring land, or in being eligible for offices, or in carrying on any profession, on the ground of religion (S. 298) Restriction based on the personal law and custom of persons, or restrictions on the

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transfer of land from agricultural classes to non-agricultural classes, shall, however, be given effect to. The Governor and Governor-General, have, however, a special responsibility to safe-guard the legitimate interests of the Minorities. Compulsory acquisition of property for public purposes shall be made only on payment of due compensation to the owner. Provision is made for the protection of certain rights, privileges and pensions granted on political considerations or compassionate grounds, and of titles conferred or other privileges granted. Previous sanction is required for Bills relating to transference of land to public ownership.

**High Commissioner:**—There shall be a High Commissioner for India in the United Kingdom appointed by the Governor-General exercising his individual judgment. He shall perform on behalf of the Federation such functions as directed by the Governor-General including the making of contracts. He may perform functions on behalf of the Province with the approval of the Governor-General. (S.302)

**General Provisions:**—The Sheriff of Calcutta shall be appointed annually by the Governor of Bengal (exercising his individual judgment) from a panel of three persons nominated by the High Court. The Sheriff shall hold office during the pleasure of the Governor. Acting Governor-General and acting Governors shall have the same powers as the Governor-General or Governor respectively. There is personal immunity for the Governor, Governor-General and Secretary of State and Mr. Majumdar Representative from any proceedings or process in any Court in India. A suit may however be brought against the Federation, a Province or the Secretary of State as a body-Corporate by any person who feels aggrieved, as already provided.

Without the sanction of His Majesty in Council, no proceeding shall lie in any Court in India for anything done during his term of office, against the G-G, the Governor, or the Secretary of State. Provision is made for the removal of disqualifications on the occasion of the first election to the Legislatures, by reason only of a person being a Minister or a non-official Member of the Governor's or Governor-General's Executive Council or of a person holding an office which was not a whole-time office remunerated either by salary or fees.

**Constitutional Amendments:**— The Federal Legislature may pass resolutions recommending the amendment of the provisions regarding the size and composition of the Chambers, or the method of election, or qualification of members without interfering with the proportion between the number of seats in the Council and in the Assembly and the proportion between British Indian seats and the seats allotted to Indian States. The Provincial Legislatures may pass resolutions recommending amendment of the provisions relating to the size and composition of the Provincial Legislature and the method of choosing, or the qualifications of members. The Legislatures generally can pass resolutions regarding the qualification of voters. Such resolutions shall not be passed by the respective Legislatures within ten years after the introduction of Provincial Autonomy or the establishment of the Federation according as it is the Provincial Legislature or the Federal Legislature respectively. The Legislatures may pass resolutions, that in the case of women, literacy shall be substituted for any higher educational standard prescribed for franchise, or that they should, if

duly qualified, be registered as voters without any application by them. The motions for the resolution shall be made at the instance of the Ministers. Addresses may be presented to the Governor or Governor-General for submission to His Majesty praying for such resolutions being communicated to Parliament by the Secretary of State who shall place them before Parliament within six months with a statement of action proposed to be taken. The Governor-General or the Governor acting in his discretion shall transmit a statement of their opinion in communicating such resolutions. In particular the effect of the amendment on the interests of the minority shall be stated, as also the view of the minority community in the matter, and whether the majority of the representatives of that minority in the Federal or Provincial Legislature, as the case may be, support the proposal. These statements shall also be placed before Parliament by the Secretary of State. With similar safe-guards for the interests of the minority and similar statements regarding the opinion of the representatives of the minority and after ascertaining the views of the Governments and Legislatures affected by any proposals, the necessary statements, and proposals for amendment on matters of reform noted above may be laid before Parliament by the Secretary of State in the form of draft Orders in Council whether ten years have elapsed or not. The number of State representatives in the Federal Legislature shall not be altered without the consent of the Ruler of the State affected thereby. (S. 308)

**Orders in Council:—**The Secretary of State shall lay before Parliament drafts of Orders in Council which shall be issued only after an address is presented to His Majesty

by Parliament. When Parliament is not in Session, the order in Council may be issued without this formality if the Secretary of State is of opinion that the order should be issued forthwith. But it shall cease to have effect at the expiration of twenty-eight days from the date on which the House of Commons first sits after the order unless the order is approved within that period by the Resolutions of Parliament. These provisions shall not apply in connection with appeals to His Majesty in Council or to orders sanctioning the taking of proceedings against a person who was Governor-General or His Majesty's Representative for relations with Indian States, or Governor or Secretary of State. (S. 309) His Majesty in Council may, by order in council, make provision for dealing with difficulties in the transition from the Old to the New Act by directing suitable adaptations of both the Acts for a limited period and by other temporary provisions.

**Definitions:—**Section 311 deals with interpretation. 'Corporation Tax' means any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring companies to make deductions in respect of income-tax from payment of interest on dividends have no application."

**Transitional Provisions :—**Section 315 states that between the establishment of Provincial Autonomy and the establishment of the Federation, the Indian Legislature shall exercise the powers of the Federal Legislature except in imposing limits to the power of the Governor-General in borrowing money. During such period the Executive authority of the Governor-General in Council shall extend to matters within the legislative competence of the Indian

Legislature, to the raising of Naval, Military and Air Forces and the governance thereof, and to make treaties. But the said authority does not extend to matters within the legislative competence of the Provincial Legislature or to enlist in any Force any person other than a British subject or a native of India. The provision as to previous sanction for legislation, as to broadcasting, instructions to the Federal Railway Authority and the Reserved Services shall have effect in regard to defence, external affairs, ecclesiastical affairs and tribal areas, as they have effect under the Act in matters where the Governor-General is to exercise his discretion and has special responsibilities. The general control of the Secretary of State shall continue and he shall not act except with the concurrence of his Advisers in Revenue grants and appropriations during this period.

Provision is made for the continuance of certain Sections of the Government of India Act of 1919 (Vide the ninth Schedule). The Federal Public Services Commission, the Federal Court, and the Federal Railway Authority may come into existence and may function earlier than the establishment of the Federation. The rights and liabilities of the Governor-General in Council during the interim period, and of the Governor-in-Council till the introduction of Provincial Autonomy, shall continue to be those of the Federation. Similar provision is also made for the rights and liabilities of the Secretary of State in Council as well.

**Commencement and Repeal ;** — The establishment of Federation and the introduction of Provincial Autonomy shall take place on dates appointed by His Majesty. The Government of India Act, is repealed. But the repeal shall



not affect the Preamble to the Government of India Act, 1919, nor shall it affect appointments made under any enactment repealed in the tenth Schedule relating to repeals.

### THE SCHEDULES.

**Federal Legislature:**—*The First Schedule* of the Act deals with the composition of the Federal Legislature. The representatives should be either British subjects or Rulers or subjects of Federated States. For the Council of State, a representative should be not less than thirty years of age, and for the Federal Assembly not less than twenty-five years of age. Out of 156 seats in the Council of State to be filled in by representatives of British India, 150 shall be filled by members elected by the constituencies in British India, and 6 seats shall be filled by persons chosen by the Governor-General in his discretion. The Provinces shall be divided into territorial constituencies for election to general seats, Sikh seats and Muhammadan seats for the Council of State. Separate electoral colleges consisting of such Anglo-Indians, Europeans and Indian Christians as the case may be, as are members of the Council of any Governor's Province or of the Assembly of such a Province, shall elect members for the Anglo-Indian, European and Indian Christian seats respectively.

Provision is made that of the persons first elected by the general constituency for the Council of State, one-third shall be chosen for three years, one-third for six years, and one-third for nine years; and thereafter, in every third year, persons shall be chosen to fill for nine years the seats then becoming vacant, in consequence of this provision. Of the seven persons elected for the European seats, three

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shall be for three years, one shall be for six years, and three for nine years. Out of the two Indian Christians, one shall be for three years, and one for nine years. Out of the six persons chosen by the Governor-General, two shall be for three years, two for six years, and two for nine years. The Anglo-Indian representative shall be for nine years.

In the Federal Assembly, three seats not allotted to any Provinces shall be filled up by the representatives of Commerce and Industries, chosen by Chambers of Commerce etc. and one by a representative of labour chosen by labour organisation. The Hindu, Muhammadan and Sikh seats will be filled by the representatives of those communities in the Provincial Assemblies voting separately for a prescribed number of communal seats. Seats allocated to Europeans, Anglo-Indians, Indian Christians and women are to be filled by the representatives of these groups in the Provincial Assemblies voting in ad hoc electoral colleges. In the case of a seat allotted to a Province which is to be filled by a landholder, it shall be filled by landholders voting in territorial constituencies.

**States' Representatives:—**The Rulers of States constituting a group of States to which a seat is allotted in the Council of State, shall in rotation, appoint a person to fill that seat. The Rulers of States constituting a group of States to which a seat is allotted in the Federal Assembly, shall appoint jointly a person to fill that seat. With the approval of the Governor-General, such Rulers, may, by agreement, appoint jointly a person to fill a seat in the Council of State instead of by rotation (See extract from Schedule for duration of membership).

Regarding the establishment of Federation on the Accession of a certain number of States, it is provided as follows:—

1. If the Rulers of at least one-half of the States included in any group to which one seat in the Council of State is allotted, accede to the Federation, they shall be deemed as being entitled to choose one member.

2. If, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State; and

3. The Population of a State shall be taken to be the population attributed thereto in column five of the Table of Seats or, if it is one of the States comprised in the said Division XVII of the Table, such figure as the Governor-General may in his discretion determine, and the total population of the State shall be the total stated at the end of the Table.

*The second Schedule* gives the provisions of the Act which may be amended without affecting the Accession of a State. *The third Schedule* prescribes the salaries and allowances of the Governor-General and the Governors. *The fourth Schedule* gives the forms of Oath or affirmation.

## RAILWAYS, JUDICATURE, SERVICES ETC.

The subject of the Ruler of an Indian State appointed to the Legislature has to swear that "saving the faith and allegiance which I owe the Ruler of the.....State, his heirs and successors, I will be faithful etc., etc, to His Majesty the King-Emperor of India."

**Provincial Legislatures:**—*The fifth Schedule* deals with the composition of the Provincial Legislatures. The age-limit for members is the same as in the case of the Federal Council and Assembly respectively; and the scheme for election or representation is by territorial constituencies for the Provincial Assemblies. For reservation of seats for members of the scheduled castes and for the seven seats for the Marathas in Bombay, the scheme shall be such that in each constituency there shall be at least one unreserved seat. For seats reserved for scheduled castes, all members of the caste entitled to vote in that constituency shall take part in a primary election held for electing four candidates for each such reserved seat, and no member not so elected as a candidate at such an election shall be qualified to hold that reserve seat, or any other seat if so prescribed. Women shall be chosen according to territorial constituencies or special constituencies for electing women members.

For election to the Legislative Councils also there may be territorial constituencies for filling up General seats, Mohammedan Seats, European Seats, Indian Christian Seats and so on.

**Franchise:**—*The sixth Schedule* deals with Franchise. Nobody can be a voter unless he is a British Subject or Ruler or Subject of a Federated State or the Ruler or Subject of any other Indian State under conditions that may

be prescribed. He must not be of unsound mind or declared to be so by a competent Court. In a Sikh, Mohammedan, Anglo-Indian or Indian Christian constituency, the voter must belong to the respective community. Such voters shall not vote in the General constituency.

Except in Provinces where constituencies have been specially formed for electing women members—in which case a person can vote in the General constituency and in the particular Women members constituency as may be prescribed by the rules—no voter shall vote in more than one territorial constituency. A person shall not be included as a voter if he is disqualified on account of corrupt practices at elections or other election offences. Property held in a fiduciary capacity shall be left out of account in calculating the total property for acquiring the qualification of a voter. The Schedule then gives the special qualifications in each of the Provinces.

*The seventh Schedule* gives the Legislative Lists (See extracts from Schedules below).

**Federal Railway Authority :—***The eighth Schedule* deals with the Federal Railway Authority. It shall consist of seven persons appointed by the Governor-General. To be a member, a person should have had experience in Commerce, Industry, Agriculture, Finance or Administration or should be or should have been within twelve months last preceding, a member of the Federal or any Provincial Legislature or in the service of the Crown in India or a Railway official in India. Of the first members three shall be appointed for three years at the expiration of which they are eligible for reappointment for a further term of three years or five years. In other cases, the term shall

be for five years with the eligibility for appointment for another five years. Matters coming up before the Authority shall be decided by a majority of the members present. The person presiding shall have a second or casting vote in the case of equality of votes. Any person concerned in any Railway contract shall not take part in a discussion of that subject and shall make a full disclosure of all the facts. At any meeting persons deputed by the Governor-General to represent him may attend and speak but not vote. The Head of the Executive Staff of the Authority shall be a Chief Railway Commissioner who shall be experienced in Railway administration. He shall be appointed by the Governor-General exercising his individual judgment after consultation with the Authority. The Chief Commissioner shall be assisted by a Financial Commissioner appointed by the Governor-General and by Additional Commissioners with experience in Railway administration appointed by the Authority on the recommendation of the Chief Railway Commissioner. The Chief Commissioner shall not be removed from office except by the Authority with the approval of the Governor-General. The Financial Commissioner shall not be removed from office except by the G-G. The Chief Commissioner and the Financial Commissioner have the right to attend meetings of the Authority. The Financial Commissioner may require any matter relating to finance to be referred to the Authority. The Authority shall not be liable to pay Indian income-tax or super-tax on its income, profits or gains. The Reserve Bank of India shall be entrusted with all the moneys of the Authority on the same lines as the Bankers for all the transactions of the Authority and on the same lines as the Bank holds moneys of the Federal Government.

*The ninth Schedule* gives the Sections of the Government of India Act 1919 which are continued in force with amendments until the establishment of the Federation. They are Sections 36-43 dealing with the members of the Governor-General's Executive Council and meetings; Sections 63, 63-A, 63-B, 63-C, 63-D, 63-E, 64, 67, 67-A, 67-B, 68, 69, & 72 dealing with the composition and functions of the Indian Legislature and the assent of the G-G to Bills, power of the Crown to disallow Acts and the power to make Ordinances in case of emergency; Sections 85, 86, 87, 89, 92, 93 dealing with salaries, allowances, leave of absence, vacation of office, temporary or acting appointments of the Governor-General and members of the Executive Council; and Section 129-A which is supplemental providing for the making of rules under the Act.

*The tenth Schedule* contains the List of enactments repealed. It is stated that the extent of the repeal of the Government of India Act 1919 relates to the whole Act except the Preamble and sub-section 1 of Section 47.

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# CHAPTER IV

## THE GOVERNMENT OF INDIA ACT, 1935.

### PART I.

#### INTRODUCTORY.

##### 1. Short title.

2. **Government of India by the Crown:—**(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty.

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

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\* Only the more important Sections of the Act are reprinted in extenso. To several of them explanatory notes are also given. In other cases, only the number and headings of Sections are printed to facilitate reference. Students would do well to consult the summary given for the corresponding portions in previous chapters.



(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise.

NOTES :— Regarding the legal basis of the new Constitution, the J. P. C. Report stated :—

“ We apprehend, therefore, that the legal basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority, and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or in the Provincial Governments and Administrations; and second their redistribution in such manner as the Act may prescribe.....(Paragraph 153).

But the Crown also possesses rights, authority and jurisdiction elsewhere in India, including those rights which are comprehended under the name of Paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council, and it will be necessary that they should also be resumed in their entirety into the hands of the Crown..... Outside the federal sphere, the States' relations will be exclusively with the Crown.....the right to tender advice to the Crown in this regard will lie with His Majesty's Government.” (Paragraph 158).

( See the White Paper (Paragraph 9 ), and notes to S. 285 below ).

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The proviso to Section 2 (1) is new and did not find a place in the Bill. Sir Samuel Hears in his Memorandum stated:—"It is not intended that special powers in relation to the State should, if not exercised by His Majesty himself, be delegated to any other authority than the Viceroy as the Crown's representative, and an amendment to make this plain will be considered." The proviso was accordingly inserted.

**3. The Governor-General of India and His Majesty's Representative as regards relations with Indian States:—**(i) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

- (a) all such powers and duties as are conferred or imposed on him by or under this Act; and
- (b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

**4. The Commander-in-Chief in India:—**There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

Notes:—The J. P. C. Report stated:—“Although the executive authority of the Federation vested in the Governor-General as the King's representative includes the superintendence, direction and control of the Military Government, the command of the Forces in India will be exercised by a Commander-in-Chief to be appointed by His Majesty.”

## PART II.

### THE FEDERATION OF INDIA.

#### CHAPTER I.

##### **Establishment of Federation and Accession of Indian States.**

5. **Proclamation of Federation of India:—**(1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

- (a) the Provinces hereinafter called Governors' Provinces; and
- (b) the Indian States which have acceded or may thereafter accede to the Federation;

and in the Federation so established there shall be included the Provinces hereinafter called Chief-Commissioners' Provinces.

(2) The condition referred to is that States—

- (a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not

## THE GOVERNMENT OF INDIA ACT, 1935.

less than fifty-two members of the Council of State; and

- (b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained,

have acceded to the Federation.

Notes:—See summary of Schedule 1 (page 109) regarding the computation of the number of members under sub-section 2 (a).

✓ 6. **Accession of Indian States:—**(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

- (a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

- (b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession;

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act:

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

## THE GOVERNMENT OF INDIA ACT, 1935.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

NOTES:—The J. P. C. Report stated:—"The rights, authority and jurisdiction which will be conferred by the Crown on the new Central Government will not extend to any Indian State. It follows that the accession of an Indian State to the Federation cannot take place other than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation (Paragraph 154). It would, we think, be very desirable that the Instruments of Accession should in all cases be in the same form.....but there can be no obligation on the Crown to accept an accession, where the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable." (Paragraph 156).

The clause in the Government of India Bill was the subject of considerable comment. "The Princes have all along looked upon the treaties of Accession as the really operative instruments binding them to the Federal Constitution, and not the Constitution Act, which, as an Act of Parliament, they cannot be expected to accept as binding on them or as applicable to their States and their subjects.....These treaties of Accession were intended to be bilateral in character creating rights and imposing reciprocal obligations both on the Rulers of Indian States and on the Crown." ( Vide Note attached to

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the letter His Excellency the Viceroy by Their Highnesses the Maharaja of Patiala, the Nawab of Bhopal, and the Maharaja of Bikaner, dated the 27th February 1935).

In the same Note Their Highnesses wrote :— " The documents of 1818, by which several States parted with their external and foreign relations in consideration of their being adequately protected from both foreign aggression and internal upheaval, were regarded as treaties of mutual friendship, amity and alliance. The proposed documents of 1935, by which the States are asked further to transfer some of their internal sovereignty as well to His Majesty the King as a result of proposals regarding Federation, are only to be Treaties of Accession. The Princes are asked to execute and sign these Instruments of Accession without regard to the derogation of their position from allies and absolute rulers in their own territories.....This undermining process is to be kept up and strengthened under the force of judge-made laws and new political theories, while re-inforcing the claims of paramountcy by the same device. It is very natural that the Princes should have serious objections to the process of gradual decline in their political status. The Princes had only agreed to federate in the interests of the Empire. In conclusion it would be well to remember that the Princes had originally accepted the invitation to federate out of their anxious desire to be of service to the Empire. The structure of the Treaty of Accession .....ought to be well in keeping with the spirit that had induced the States to accept the federal scheme." It is only natural to expect that this aspect will be given due weight and importance when the reasonable reservations in the Instrument of Accession come up for examination.

Sir Samuel Hoare wrote in his Memorandum to the Government of India dated the 4th March 1935:—"So far as



regards the States, the Bill, when it has become law will provide the machinery whereby the Indian States may severally accept that Constitution and thus become part of the Federation, not because the Act is an Act of Parliament, but because it embodies a Constitution to which they have of their own volition acceded.....That the Constitutional structure must be accepted as a whole seems obvious.....It is contended that not only ought each Ruler to be able to specify those sections of the Act which he is willing to accept, but also that the Federal Constitution as regards each State is to be looked for exclusively in the Instrument of Accession of that State.....Such a conception of Federation would imply the possibility not only of different Constitutions for the States and for British India, but even of a variety of Constitutions among the States themselves.....Their Highnesses lay stress on what they describe as the bilateral nature of the Instruments of Accession. These Instruments are bilateral in so far as they have no binding force until His Majesty has signified his acceptance of them; but His Majesty's Government cannot on that ground accept the view that they are to be described as 'treaties'. Though the word 'treaty' is not used in S. 6 and only the words "Instrument of Accession" are used, the suggestions were partly accepted; and Clause 6 of the Bill was modified by the substitution of the words "accedes to the Federation as established under this Act" instead of the words "accepts this Act as applicable to his State and to his subjects." Again the words "by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation" are additions in Section 6 [1] (a); and the words "to the provisions of the Act so far as they are applicable therein by virtue of his Instrument of Accession" instead of "to this Act" used in the Bill are also additions in Section 6 (1) (b) to make the meaning clear. Sub-section (4) is also new.

# THE GOVERNMENT OF INDIA ACT, 1935.

## CHAPTER II.

### The Federal Executive.\*

#### *The Governor-General.*

#### 7.— Functions of Governor-General.

#### 8.—Extent of executive authority of the Federation:—

(1) Subject to the provisions of this Act, the executive authority of the Federation extends—

- (a) to the matters with respect to which the Federal Legislature has power to make laws;
- (b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas;

Provided that—

- (i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;

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\*Constitutional Governments are classified as Parliamentary or Presidential. Under the former the Executive is responsible to the Legislature and liable to be dismissed by it. Under the latter, the Chief of the Executive is elected directly by the people or their representatives for a fixed period and is not responsible to the Legislature.

- (ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State;
- (iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India; and
- (iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

NOTES:—The words "subject to the provisions of this Act" at the commencement of sub-section (1) require a word of

## THE GOVERNMENT OF INDIA ACT, 1935.

explanation. Sir Samuel Hoare wrote in his Memorandum:—  
“Where administration of a subject has, in virtue of an agreement attached to the Instrument of Accession, been undertaken by the Ruler of a State, the executive authority of the Federation cannot itself undertake such administration, though it has appeared unnecessary to make any express provision to this effect in view of the opening words of clause 8 “Subject to the provisions of this Act.”

Sub-Section (2) is an addition in the Act not found in the Bill; the second proviso to sub-section (1) c makes the meaning clearer. Sir Samuel Hoare wrote, “Since by clause 8, the executive authority of the Federation is correlated to the legislative power, it follows (and indeed it is expressly so provided) that a Ruler can to the same extent exclude the exercise of the executive authority in his State or qualify it by corresponding conditions of limitations. But His Majesty's Government recognize that in a few instances the Bill does confer an executive authority on the Federation which is not related to an item in the Federal Legislative List and it is undoubtedly the case that, as the Bill stands at present, a Ruler could not by his Instrument of Accession exclude or qualify the executive authority of the Federation in respect of these matters.....His Majesty's Government are, however, willing to make it clear that the executive authority of the State would continue in respect of its own laws, being laws not inconsistent with any Federal law applying to the State; and that the executive authority of the State would only be superseded by the executive authority of the Federation when the latter is exercised in virtue of a Federal Law.” Subsection (2) was added, as also proviso (ii) to subsection (1) (c) in its clear and new form.

*Administration of Federal Affairs.*

\*9. Council of ministers:— (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this subsection shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

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\* The J. P. C. Report stated :— "There will, therefore, be centripetal as well as centrifugal forces, and it seems to us conceivable that, until the advent of a new hitherto unknown alignment of parties, a Central Executive such as we have described may even come to function, as we believe that the Executive of the Swiss Confederation functions as a kind of business committee of the Legislature."

## THE GOVERNMENT OF INDIA ACT, 1935.

NOTES :—Some sort of dyarchy is introduced in the Central Executive. The J. P. C. Report stated:—"It is then proposed that there shall be a Council of Ministers, chosen and summoned by the G-G and holding office during his pleasure, to aid and advise him in the exercise of the powers conferred on him by the Constitution Act other than his powers relating to (1) defence, external affairs and ecclesiastical affairs, and (2) matters left by the Act to the Governor-General's discretion..... We assume therefore that they will not be entitled to advise him in the exercise of any prerogative powers of the Crown which may be delegated, presumably in the Letters Patent constituting the office. We are of opinion that this is a proper distinction to draw; that ministers should not, for example, have the right to advise him on the exercise of such a prerogative of His Majesty as the grant of honours.. ..."

10. Other provisions as to ministers:—( 1 ) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

( 2 ) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

( 3 ) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General:

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

**11. Provisions as to defence, ecclesiastical affairs, external affairs, and the tribal areas:—** (1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

**NOTES:—**On the subjects of defence and foreign relations the Note of Their Highnesses, referred to already, stated:—  
“The States have, however, every right to expect that when the time arrives for transferring them to the Federal Government, the States would be fully consulted and adequate measures taken to have their own rights and privileges taken into consideration. Until that time has arrived, however, the States desire that, so far as they are concerned, the existing arrangements should continue, and no further obligations on account of foreign relations should be undertaken without their previous consent.”

## THE GOVERNMENT OF INDIA ACT, 1935.

Regarding the constitution of Advisory Committees the J. P. C. Report stated:— "An advisory body similar to that of the Committee of Imperial Defence, constituted at the G-G's discretion,.....might, we think, have many advantages..... and provided that the extent and methods of consultation are clearly understood to rest in the discretion of the G-G., we see no objection to the formation of any committee or committees that the Federal Government and Legislature may consider useful." In another connection the Report stated:—" We assume that the Department of External Affairs will maintain a close contact with the Department of Trade and Commerce."

The words "except the relations between the Federation and any part of His Majesty's Dominions" in the Section may be noted.

**12.— Special responsibilities of Governor-General:—**(1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say,—

- (a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;
- (b) the safeguarding of the financial stability and credit of the Federal Government;
- (c) the safeguarding of the legitimate interests of minorities;
- (d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;
- (e) the securing in the sphere of executive action of the purposes which the provisions of chapter III



of Part V of this Act are designed to secure in relation to legislation;

- (f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;
- (g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and
- (h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

NOTES:—In discharging his functions in which the G-G is of opinion that any one of his responsibilities is involved, "he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may be contrary to the advice which his Ministers have tendered." Sub-section 2 says that he shall then exercise his individual judgment; and Section 14 later on provides for the superintendence of the Secretary of State in matters where the G-G is required to act in his discretion or to exercise his individual judgment.

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Regarding sub-clause (g) of the corresponding clause in the Government of India Bill, the Princes' Note contained the following:—"Protection should be extended not only to the vital and legitimate interests of the Indian States but also to the privileges and dignity of the Rulers. They should continue to enjoy the recognised privileges of Sovereign Rulers." Item (g) has been accordingly recast in the Act.

Regarding item (h) the J. P. C. Report stated:—"It is plain that the G-G must be free to exercise his own judgment in any matter which affects the administration of any of the reserved departments, even though it arises primarily within the ministerial sphere."

Sir Samuel Hoare wrote about special responsibilities thus:—"The special responsibilities relate only to his relations which his Ministers in the process of arriving at a decision as to action to be taken in the exercise of the executive authority of the Federation. The first special responsibility would not enable the G-G to take any action in a State which the Federal Government was not otherwise competent to take in virtue of clause 8 (now section 8) read with the provision in the Legislative Lists, and subject, in relation to any State, to any conditions and limitations attached by the Ruler to acceptance of items in the Federal List. No power of intervention in a State by the G-G, in a non-federal matter would flow from this clause."

### 13. Provisions as to Instrument of Instructions:—

(1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General,

and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

NOTES:—The Instrument of Instructions may be the medium for setting up certain conventions. For instance, the J. P. C. Report stated:—"We understand the intention of His Majesty's Government to be that the principle of joint deliberation (between the Counsellors and the Ministers) shall be recognised and encouraged by the G-G's Instrument of Instruction." In another connection the Report stated:—"Under the White Paper proposals, the G-G is to be directed by his Instrument of Instructions to include "so far as possible" in his Ministry, not only members of important minority communities, but also representatives of the States which accede to the Federation." It is submitted that though several matters in which the States are interested cannot be legally put in as reservations in the Instrument of Accession, yet they can apply for the same to be included in the Instrument of Instructions as items in which some constitutional conventions may be set up for safeguarding the interests and claims of the States.

14. *Superintendence of Secretary of State*:—(1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may

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from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

**15 Financial adviser to Governor-General:— (1)**  
The Governor-General may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser and the numbers of his staff and their conditions of service, shall be such as the Governor-General may determine.

(4) The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion:

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

NOTES:—The J. P. C. Report stated:—"We think that the Financial Adviser must be regarded technically as the G.G.'s adviser, but his advice ought to be available to Ministers and we hope that they will freely consult him."

**16 Advocate-General for Federation:**—(1) The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation.

(2) It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

NOTES:— It is submitted that under the rule-making powers conferred on the Federal Court by S. 214, reciprocal rights of audience in the Federal Court should be given to the Advocate-General of a Federated State or his substitute in cases in which the interests of the State are concerned.

The J. P. C. Report stated:— "We think it essential that the Advocate-General should hold his office on a settled

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tenure and should have no political associations with the Federal Ministry. "

### 17.—Conduct of business of Federal Government.

#### CHAPTER III

#### The Federal Legislature

##### *General.*

18.— **Constitution of the Federal Legislature.**—(1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

NOTES:—Legislatures are either unicameral or bicameral according as the legislature consists of a single chamber or double chambers respectively. Sir John Marriot says:—"The world has decided with rare uniformity in favour of the bi-cameral form of legislature. Experiments in unicameralism have been few and unimportant, and have invariably resulted in demonstrating the necessity of a second chamber.....The necessity of a counterpoise to democratic fervour; the safety that lies in sober second thoughts; the advisability of a check on hasty and ill-considered legislation; the value of an appeal from Philip drunk to Philip sober; the liability of a second Chamber to violent gusts of passion,—these are arguments for second Chambers. But "to devise a good Second Chamber, to discover for it a basis which shall be at once intelligible and differentiating, to give it powers of revision without powers of control, to make it amenable to permanent public sentiment and yet independent of transient public opinion; to erect a bulwark against revolution without interposing a barrier to reform—this is a task which has baffled the ingenuity of Constitution-mongers from time immemorial." It is argued that the bicameral system is essential to the successful working of a genuine federal system. A federal second chamber is a ready and convenient means of satisfying the Centrifugal sentiments of the federal units.

19. **Sessions of the Legislature, prorogation and dissolution:—**(1) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year,

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and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

**20. Right of Governor-General to address, and send messages to, Chambers.**

**21. Rights of ministers, counsellors and Advocate-General as respects Chambers.**

**22. Officers of Chambers:—**(1) The Council of State shall as soon as may be choose two members of the Council to be respectively President and Deputy-President thereof and, so often as the office of President or Deputy-President becomes vacant, the Council shall choose another member to be President or Deputy-President, as the case may be.

(2) A member holding office as President or Deputy-President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy-President, or, if the office of Deputy-President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the



Council the Deputy-President or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.

(4) There shall be paid to the President and the Deputy-President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine.

(5) The foregoing provisions of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker" and "Deputy-Speaker" for the titles "President" and "Deputy-President" respectively, and with the substitution of references to the Assembly for references to the Council:

Provided that, without prejudice to the provisions of subsection (2) of this section as applied by this subsection, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

**23. Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.** (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

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The President or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

### *Provisions as to Members of Legislature.*

#### **24. Oath of members.**

#### **25 Vacation of seats.**

✓ **26. Disqualifications for membership:—**(1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

- (a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act.

- (e) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;
- (f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-General, acting in his discretion, has removed the disqualification:

Provided that a disqualification under paragraph (f) of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

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(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of subsection (1) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

- (a) he is a minister either for the Federation or for a Province; or
- (b) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

NOTES:—Subsection (1) (f) is an addition for which there was no provision in the Bill.

**27. Penalty for sitting and voting when not qualified, or when disqualified.**

**28. Privileges &c. of members.**

**29. Salaries and allowances of members.**

### *Legislative Procedure.*

**30. Provisions as to introduction and passing of Bills:—**(1) Subject to the special provisions of this Part of

this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

**31. Joint sittings of both Chambers in certain cases:—**

(1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

- (a) the Bill is rejected by the other Chamber; or
- (b) the Chambers have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

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the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this subsection, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly:

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to subsection (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers;

Provided that at a joint sitting—

(a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

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and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

**32. Assent to Bills and power of Crown to disallow Acts:—**(1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure :

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.



(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

*Procedure in Financial matters.*

33. **Annual financial statement:—**(1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- ✓ (a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation :—

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- (a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;
- (b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (c) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser;
- (d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;
- (e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion: provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges;

- (f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;
- (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;
- (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

**34. Procedure in Legislature with respect to estimates:—**(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) or paragraph (f) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands

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for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein:

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

**35. Authentication of schedule of authorised expenditure.**

**36. Supplementary statements of expenditure.**

**37. Special provisions as to financial Bills:—**(1) A Bill or amendment making provision—

- (a) for imposing or increasing any tax; or
- (b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or
- (c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.

*Procedure Generally.*

**38. Rules of procedure:—**(1) Each Chamber of the Federal Legislature may make rules for regulating, subject

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to the provisions of this Act, their procedure and the conduct of their business :

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

- ( a ) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;
- ( b ) for securing the timely completion of financial business;
- ( c ) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;
- ( d ) for prohibiting, save with the consent of the Governor-General in his discretion,—
  - ( i ) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the

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Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

NOTES:— The fourth proviso in Subsection (1) (d) is new, when compared to the Bill.

**39. English to be used in the Federal Legislature.**

**40. Restrictions on discussion in the Legislature.**

**41. Courts not to inquire into proceedings of the Legislature:—**(1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

### CHAPTER IV.

#### **Legislative Powers of Governor-General.**

**42. Power of Governor-General to promulgate Ordinances during recess of Legislature:—**(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render



it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

**Provided that the Governor-General—**

- (a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and
- (b) shall not, without instructions from His Majesty promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

- (a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;
- (b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal

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Legislature assented to by the Governor-General; and

- (c) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

NOTES :—The following Bills should be reserved for the signification of His Majesty's pleasure:—

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;
- (b) any Bill which would, if it became law so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill,
- (c) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement;
- (d) any Bill regarding which doubt may be felt by the Governor-General whether it does or does not offend against the purposes of Chap III, Part V of the Government of India Act (re. provisions against discrimination). Vide draft Instrument of Instructions to the G-G.

43. Power of Governor-General to promulgate ordinances at any time with respect to certain subjects:—(1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take

immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

- (a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;
- (b) may be withdrawn at any time by the Governor-General; and
- (c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

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(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

**44. Power of Governor-General in certain circumstances to enact Acts:—**(1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in

the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion

NOTE:— Subsection (1) (a) is new (not in the Bill.)

#### CHAPTER V.

#### **Provisions in case of Failure of Constitutional Machinery.**

**45. Power of Governor-General to issue Proclamations:—**(1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

- (a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;
- (b) assume to himself, all or any of the powers vested in or exercisable by any Federal body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority:

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Provided that nothing in this subsection shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate.

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Subsection (4) and (5) are new. The Hydari Committee Report dated the 21st February 1935 stated:— "While the States are willing to accede to the Federation for the purpose of obtaining a Constitution giving responsible Government at the Centre, it is not obviously intended that if such responsibility has become impossible of attainment, the powers handed over by the Federated States should still be subtracted from them." Their Highnesses' Note stated:— "It was understood that in the event of a breakdown of the Federal Constitution or an amendment without the consent of the States, beyond such minor changes in respect of which previous consultation may not be necessary by agreement, the trust would be determined and the powers transferred would revert to States" "Regarding the break-down, Sir Samuel Hoare wrote:— "His Majesty's Government, however, see no objection to meeting any apprehensions that may be felt about this clause by inserting a time-limit on its operation." Subsection 4 was accordingly inserted.

## CHAPTER V

### THE GOVERNMENT OF INDIA ACT, 1935. (Contd.).

#### PART III.

#### \*THE GOVERNORS' PROVINCES.

##### CHAPTER I.

##### The Provinces.

46 **Governors' Provinces:**—(1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act.

##### 47. Provisions as to Berar.

##### CHAPTER II.

##### The Provincial Executive.

##### *The Governor.*

48. **Appointment of Governor:** (1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.

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\*NOTE.—The sections relating to the Provincial Executive, Legislatures, Legislative Procedure, provision in case of failure of constitutional machinery etc. are practically similar to the corresponding sections noted above dealing with the respective subjects under Part II "Federation of India."



**49. Executive authority of Province.**

*Administration of Provincial Affairs.*

**50. Council of ministers.**

**51. Other provisions as to ministers.**

**52. Special responsibilities of Governor.**—(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:—

- (a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;
- (b) the safeguarding of the legitimate interests of minorities;
- (c) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;
- (d) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation;
- (e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;
- (f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

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- (g) the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.

### **53. Provisions as to Instrument of Instructions.**

### **54. Superintendence of Governor-General.**

### **55. Advocate-General for Province.**

**56. Provisions as to police rules:—** Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force.

**57. Provisions as to crimes of violence intended to overthrow Government:—**(1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by

a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

**58. Sources of certain information not to be disclosed—**  
The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given—

(a) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other

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person except in accordance with directions of the Governor in his discretion; or

- (b) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

### 59. Conduct of business of Provincial Government.

#### CHAPTER III.

#### The Provincial Legislature.

##### *General.*

60. Constitution of Provincial Legislatures:—(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(b) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

NOTES:—The J. P. C. Report stated:—"It is also proposed that after a period of ten years, a bicameral Legislature may abolish its Legislative Council, and that a unicameral Legislature may present an address to the Crown praying for the establishment of a Legislative Council."

**61. Composition of Chambers of Provincial Legislatures.**

**62. Sessions of the Legislature, prorogation and dissolution.**

**63. Right of Governor to address, and send messages to, Chambers.**

**64. Rights of ministers and Advocate-General as respects Chambers.**

**65. Officers of Chambers**

**66. Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum.**

*Provisions as to Members of Legislatures.*

**67. Oath of members.**

**68. Vacation of seats:—**(1) No person shall be a member of both Chambers of a Provincial Legislature, and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.

**69. Disqualifications for membership.**

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70. Penalty for sitting and voting when not qualified, or when disqualified.

71. Privileges, &c. of members.

72. Salaries and allowances of members.

*Legislative Procedure.*

73. Introduction of Bills, &c.

74. Passing of Bills in Provinces having Legislative Councils.

75. Assent to Bills.

76. Bills reserved for consideration.

77. Power of Crown to disallow Acts.

*Procedure in Financial matters.*

78. Annual financial statement.

79. Procedure in Legislature with respect to estimates.

80. Authentication of schedule of authorised expenditure.

81. Supplementary statements of expenditure.

82. Special provisions as to financial Bills.

83. Provisions with respect to certain educational grants.

*Procedure generally.*

84. Rules of procedure.

85. English to be used in Provincial Legislatures.

86. Restrictions on discussion in the Legislature.

87. Courts not to inquire into proceedings of the Legislature.

CHAPTER IV.

**Legislative Powers of Governor.**

**88. Power of Governor to promulgate ordinances during recess of Legislature.**

**89. Power of Governor to promulgate ordinances at any time with respect to certain subjects.**

**90. Power of Governor in certain circumstances to enact Acts.**

CHAPTER V.

**Excluded Areas and Partially Excluded Areas.**

**91. Excluded areas and partially excluded areas:—**  
(1) In this Act the expressions "excluded area" and "partially excluded area" mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas.

The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this subsection before Parliament within six months from the passing of this Act.

(2) His Majesty may at any time by Order in Council—

- (a) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area;
- (b) direct that the whole or any specified part of a partially excluded area shall cease to be a

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- partially excluded area or a part of such an area;
- (c) alter, but only by way of rectification of boundaries, any excluded or partially excluded area;
- (d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area,

and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid the Order in Council made under subsection (1) of this section shall not be varied by any subsequent Order.

**92. Administration of excluded areas and partially excluded areas.**

**CHAPTER VI,**

**Provisions in case of Failure of Constitutional Machinery.**

**93. Power of Governor to issue Proclamations.**

**PART IV.**

**THE CHIEF COMMISSIONERS' PROVINCES.**

**94. Chief Commissioners' Provinces:—** (1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area



known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act.

✓(2) Aden shall cease to be part of India.

(3) A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.

95. British Baluchistan.

96. The Andaman and Nicobar Islands.

97. Coorg.

98. Provisions as to police rules &c. and as to crimes of violence intended to overthrow the Government.

## PART V

### LEGISLATIVE POWERS.

#### CHAPTER I.

##### Distribution of Powers.

99. Extent of Federal and Provincial laws:— (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of India; or

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- (b) to British subjects who are domiciled in any part of India wherever they may be; or
- (c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or
- (d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or
- (e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

NOTES :—" The effect of a Federal Act upon a British subject in a State, if the Act relates to a matter in respect to which the State had not federated, would not, by virtue of the Act, impose any duty on the State."

**100. Subject matter of Federal and Provincial laws:—**

(1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act ( hereinafter called the " Federal Legislative List " ).

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have

power to make laws with respect to any of the matters enumerated in List III in the said Schedule ( hereinafter called the " Concurrent Legislative List" ).

(3) Subject to the two preceding subsections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule ( hereinafter called the "Provincial Legislative List" ).

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

**101. Extent of power to legislate for States:—**Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

**102. Power of Federal Legislature to legislate if an emergency is proclaimed:—**(1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation ( in this Act referred to as a " Proclamation of Emergency " ) that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the pre-

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vious sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

### (3) A Proclamation of Emergency—

- (a) may be revoked by a subsequent Proclamation;
- (b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and
- (c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

**103. Power of Federal Legislature to legislate for two or more Provinces by consent.**

**104. Residual powers of legislation:—**(1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

**105. Application of Naval Discipline Act to Indian naval forces.**

**106. Provisions as to legislation for giving effect to international agreements.—**(1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

## THE GOVERNMENT OF INDIA ACT, 1935. (Contd.)

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

**107. Inconsistency between Federal laws and Provincial, or State, laws.—**(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which,

having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail, and the law of the State shall, to the extent of the repugnancy, be void.

## CHAPTER II.

### Restrictions on Legislative Powers.

**108. Sanction of Governor-General or Governor required for certain legislative proposals:—**(1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

- (a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or
- (b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or
- (c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

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- (d) repeals, amends or affects any Act relating to any police force; or
- (e) affects the procedure for criminal proceedings in which European British subjects are concerned; or
- (f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or
- (g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

- (a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India; or
- (b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or
- (c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or
- (d) affects the procedure for criminal proceedings in which European British subjects are concerned;



and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

( i ) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

( ii ) repeals, amends or affects any Act relating to any police force.

( 3 ) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

**109. Requirements as to sanctions and recommendations to be regarded as matters of procedure only.**

**110. Savings.**—Nothing in this Act shall be taken—

( a ) to affect the power of Parliament to legislate for British India, or any part thereof; or

( b ) to empower the Federal Legislature, or any Provincial Legislature—

( i ) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or

## THE GOVERNMENT OF INDIA ACT, 1935. (Contd.)

- (ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or
- (iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

### CHAPTER III.

#### **Provisions with respect to Discrimination, &c.**

##### **111. British subjects domiciled in the United Kingdom.**

**112. Taxation:—**(1) No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies as incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

**113. Companies incorporated in the United Kingdom:—**(1) Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United

Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with—

- (a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed; or
- (b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants:

Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in subsection (1) of this section, any company incorporated by or under the laws

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of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

114. Companies incorporated in India.

115. Ships and aircraft. :

116. Subsidies for the encouragement of trade or industry.

117. Supplemental.

118. Power to secure reciprocal treatment by convention.

119. Professional and technical qualifications in general.

120. Medical qualifications.

121. Officers of Indian Medical Service, &c.

## PART VI.

### ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND STATES.

#### *General.*

122. **Obligation of units and Federation:—** (1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

(2) The reference in subsection (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

NOTE :—Sub-section (3) is an addition in the Act.

**123. Governor-General may require Governors to discharge certain functions as his agents.**

NOTE :—This section is an addition in the Act.

**124. Power of Federation to confer powers, &c. on Provinces and States in certain cases:—**(1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the the Federal Legislature which extends to a Federated State may confer powers and impose

duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

**125. Administration of Federal Acts in Indian States:-**

(1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take judicial notice of any agreement made under this section.

**126. Control of Federation over Province in certain cases.**

**127. Acquisition of land for Federal purposes.**

**128. Duty of Ruler of a State as respects Federal subjects:—**(1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding subsection, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit :

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

NOTES on Sections 124 to 128:-- The Act provides the following methods of Local Administration: (1) It may be entrusted conditionally or unconditionally to the Ruler or his Officers by the Governor-General with the Ruler's consent (2) An Act of the Federal Legislature may confer powers and impose duties on officers and authorities of the State to be designated

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for the purpose by the Ruler. The Act may very likely provide, if necessary, for the withdrawal of such Officers from the control of the State unless otherwise provided for (3) "Provision may be made by agreement. Agreements may, and if provision has been made in the Instrument of Accession shall, be made between the G-G and the Ruler regarding administration." In such cases, there is a provision for inspection. Unless there is a high standard of administrative efficiency, local administration cannot generally be claimed by the States (4) The last method is under Section 6 (2) by which reservations of executive authority may be made.

In the Princes' Note it was stated:—"Accepting the suggestion of the Joint Select Committee with regard to the Federal Court, clause 201 has provided that the Federal Court, if it requires the aid of the civil or judicial authorities in a Federated State, shall cause a *letter of request* in that behalf to be sent to the Ruler of that State. Cannot a similar *letter of request* be also sent to the Ruler whose system of administration may be inadequate for the federal objects in view? If diplomatic action or friendly persuasion has been known till now to have achieved its end, there is little justification to substitute in their place the sending of *directions and instructions* for the improvement of the administration of a State, even in a department dealing with a non federal subject, simply because the exercise of the executive authority of the Federation is felt to be impeded or prejudicially affected."

To this, Sir Samuel Hoare replied:—"The procedure which the Note suggests of "Letters of Request" does not appear suitable. That method was adopted in clause 201 in order to meet the special relations in which the Federal Court stands towards a State High Court, which find no parallel in the relations of the Governor-General to the Ruler of a State."



The words "in accordance with the policy.....fit" in Section 125 (2) are additions in the Act as also 125 (3). The words "so far as it is.....therein" in Section 128 (1) and the proviso in 128 (2), are additions in the Act. In the Act, the words "or has failed to maintain a system of administration adequate for the purposes of any Act of the Federal Legislature, the administration of which has been entrusted to him or to his officers" were used in the Bill in the corresponding clause with reference to the Ruler of a Federated State under the duty of a State as respects Federal subjects in what has now become law under Section 128 (2). But the Act has omitted the words found originally in the Bill.

### *Broadcasting.*

#### **129. Broadcasting.**

### *Interference with Water Supplies.*

#### **130. Complaints as to interference with water supplies.**

#### **131. Decision of complaints.**

#### **132. Interference with water supplies of Chief Commissioner's Province.**

#### **133. Jurisdiction of Courts excluded.**

**134. Ruler of State may exclude application of provisions as to water supply:—**The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler whereof has declared in his Instrument of Accession that those provisions are not to apply in relation to his State.

*Inter-Provincial Co-operation.*

135. Provisions with respect to an Inter-Provincial Council.

PART VII

FINANCE, PROPERTY, CONTRACTS AND SUITS.

CHAPTER I.

Finance.

*Distribution of Revenues between the Federation  
and the Federal Units.*

136. Meaning of "revenues of Federation" and "revenues of Province."

137. Certain succession duties, Stamp duties, terminal taxes and taxes on fares and freights:—Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature: ..

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

**138. Taxes on income:—**(1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed:

Provided that—

- (a) the percentage originally prescribed under this subsection shall not be increased by any subsequent Order in Council;
- (b) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding subsection, the Federation may retain out of the moneys assigned by that subsection to Provinces and States—

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- (a) in each year of a prescribed period such sum as may be prescribed; and
- (b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction:

Provided that—

- (i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council;
- (ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation

of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section—

“taxes on income” does not include a corporation tax;

“prescribed” means prescribed by His Majesty in Council; and

“Federal emoluments” includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income-tax is chargeable.

139. **Corporation tax:—**(1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation.

(2) Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.

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(3) Where the Ruler of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined.

If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that Court that the amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal.

**140. Salt duties, excise duties and export duties:—(1)** Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenue of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.

(2) Notwithstanding anything in the preceding subsection, one-half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned

to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

**141 Prior sanction of Governor-General required to Bills affecting taxation in which Provinces are interested:—**

(1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion.

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

**142. Grants from Federation to certain Provinces.**

**143. Savings.**

**144. Calculation of "net proceeds", &c.**

NOTES ON SECTIONS 136-141:—The Ministers' Committee Report stated, "The Committee realise that the general and

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fundamental condition of a balanced budget in the case of the Central and Provincial Governments cannot be specifically enacted in the Statute, but they wish to urge with emphasis that the other two conditions precedent to the adhesion of the States to the financial scheme already specified should be so incorporated ..... Some States like Kashmir, Bhopal and Indore have definitely declined to accept the liability to pay the corporation tax or an equivalent."

The Princes' Note stated, "The Princes have, for instance, from the very outset set their face against any direct tax, and have only agreed to be subjected to certain modes of indirect taxation as their contribution to the Federal fisc..... The Bill ought to make clear distinction between ordinary financial stress and emergencies like wars or years of continuous and chronic financial deficits. To meet the former occasion no State ought to be called on to pay any surcharge or surplus taxes or cash contributions of any kind. Such occasions of stress ought to be bridged over by temporary adjustments and stringent retrenchment of expenditure."

As regards emergency, the States' Delegation had stated, "If at any time even during the period of the first 10 years the financial position becomes such that the Federal expenditure cannot be met from the sources of revenues permissible to the Federal Government after all possible economies had been effected and the sources of indirect taxation open to the Federation exhausted, and the return of income-tax to the Provinces suspended, a state of emergency will be held to have come into being, when all Federal units will make contributions to the Federal fisc on an equitable and prescribed basis."

The Princes' Note stated, "The States would prefer to have cash contributions left to the free volition of the States. Such voluntary aid from Indian Rulers has not failed in the



past during wars and other occasions of service to the Empire. If, however, such voluntary contributions are held to be insufficient for the safety of financial forecasts, the Princes would prefer enhancement in the incidence of permissible taxes as, for instance, excise duties on articles like sugar, matches and tobacco, and other commodities manufactured in the country, to be ear-marked for meeting occasions of grave financial stress. The States had agreed to excises on tobacco and matches as Federal sources of revenue permissible in severe emergencies. No provision has been made in the Bill in regard to them as such."

To this Sir Samuel Hoare replied, "The States' accession to the subject of Corporation tax would, of course, be subject to conditions or limits to be expressed in the Instrument of Accession." After referring to the provision regarding communication, and the expiration of 10 years now found embodied in the Act, he wrote, "Any further conditions could be considered in connection with the negotiations for the Instruments of Accession."

"Apart from this qualification and subject to the special provisions relating to surcharge or taxes on income, no provision is made for the imposition of direct taxation by the Federation in a State, unless at some future date some States may desire to accede to taxation entries within items 46-56 of the Federal Legislative List (i. e. items 48 to 51 and 53 to 59 of the List in the Act). This is admittedly an unlikely development at any near date, but if in future any State should desire to take such a course, there is no reason why provision should not be made of admitting it to corresponding benefits... ..The question of attachment of conditions to acceptance of item 43 of the Federal Legislative List (i. e. item 45 of the List in the Act) can, as in other instances, be considered in

connection with the negotiation of the terms of the Instrument of Accession; but neither in the White Paper nor in the recommendations of the Joint Select Committee can any support be found for the proposal that federal excises should be regarded as in the nature of emergency taxes "

As regards internal customs duties, the J. P. C. Report stated, "It is greatly to be desired that States adhering to the Federation, should, like other Provinces, accept the principle of internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India ..... We recognize that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion would have to be brought to bear upon the States.

*The Crown and the States.*

**145. Expenses of the Crown in connection with Indian States.**

**146. Payments from or by Indian States.**

**NOTE:**— This refers to cash contributions and payments in respect of loans.

**147. Remission of States contributions:** — (1) Subject to the provisions of subsection (3) of this section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State.

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—

(a) in return for specific military guarantees, or

(b) in return for the discharge of the State from obligations to provide military assistance,

there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that state, but in the first-mentioned case on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

(3) Notwithstanding anything in this section—

(a) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the

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section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in subsection (2) of the said section, whichever first occurs; and

- (b) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State; and
- (c) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash contributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section.

(5) In this chapter "cash contributions" means—

- (a) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to

provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent;

- (b) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory;
- (c) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter "privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say—

- (a) rights, privileges or advantages in respect, of or connected with, the levying of sea customs or the production and sale of untaxed salt;
- (b) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;
- (c) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;

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(d) privileges in respect of free service stamps or the free carriage of State mails on government business;

(e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and

(f) the right to issue currency notes, not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.

(7) An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.

**148. Certain payments to Federated States, &c., to be charged on Federal revenues.**—Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

**149. Value of privileges and immunities to be set off against share of taxes, &c., assigned to Federated States.**—

Where under the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which has not been otherwise taken into account, shall, if and in so far as the Act of the Federal Legislature under which the payment or distribution is made so provides, be set off against the payment or distribution.

NOTES ON SECTIONS 147 TO 149 :—The word “periodical” in Subsection 5 of Section 147 is an addition in the Act. In Subsection 6, the provision under (d) is an addition in the Act.

The States’ Ministers’ Note stated, “The Committee have come to the conclusion that the definition of the term “privilege or immunity” is neither accurate nor acceptable to the States as a whole, that some States in particular raise the strongest possible objection to the description, as a privilege or immunity, of the items referred to in Subclauses (a) to (e) (i. e. roughly items a, b, d, e, and f in Section 147 (6) of the Act), and contend that in most cases these items cannot be defined as concessions, privileges or immunities, many of them having a historical origin and most of them being the result of some specific agreements, compromises or contracts having the character and incidence of reciprocal obligations.”

The Princes’ Note contained the following remark :—

“Many of the financial advantages now enjoyed by the States are not at all gratuitous benefits or immunities; they arise under agreements and have been paid for and purchased

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for value. Moreover, if any surplus revenue from excise is to be refunded to the States, there is absolutely no justification for any set-off as claimed by clause 147 of the Bill. If surplus taxation is refunded, it surely ought to benefit the people on whom the incidence of tax mainly falls; there is no reason to have it set off against the so-called and fancied immunities, which have a peculiar historical origin and justification of their own and cannot be so unfairly withdrawn.

While dealing with cash contributions, payment of tribute, and ceded territories, the Bill has entirely lost sight of yet another kind of contribution the States have been making towards Federal finance, which deserves proper recognition. The Federal Finance Committee at the Round Table Conferences had enumerated the "contributions in kind made for defence by the maintenance of State Forces." These States forces have now been embodied in the Indian Army as distinct units, earmarked for service abroad as well as for internal security, and if they are maintained at State expense, their annual charges ought to be distinctly recognized as contributions made by the States towards the Federal fisc and allowances made for them " ( See item No. 1 of the Federal Legislative List ).

About this Sir Samuel Hoare wrote:- " The definition of privileges and immunities in subsection (6) is based upon the Report of the Davidson Committee. The effect of this subclause is of the nature of a protection to the States rather than the reverse, since it limits within the range so defined the matters which the Crown may, when the Instruments of Accession are being negotiated, require a State to acknowledge as financial privileges or immunities. Without such a definition the possible range of such privileges or immunities would be extended. "



*Miscellaneous Financial Provisions.***150. Expenditure defrayable out of Indian revenues.—**

(1) No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India

**151. Provisions as to the custody of public moneys.**

**152. Exercise by Governor-General of certain powers with respect to Reserve Bank.**

NOTES ON SECTION 152 :—The Reserve Bank of India Act was passed in 1934. "It will be the business of the Bank to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage. The original share capital of the Bank is five crores of rupees divided into shares of one hundred rupees each. Separate registers of shareholders are to be maintained at Bombay, Calcutta, Delhi, Madras and Rangoon. The general superintendence and direction of the affairs and business of the Bank are entrusted to a Central Board of Directors, consisting of a Governor and two Deputy Governors to be appointed by the Governor-General in Council, four Directors to be nominated by the Governor-General in Council, eight Directors to be elected on behalf of the shareholders on the various registers, and one Government official to be nominated by the Governor-General in Council (Eddy and Lawton in "India's New Constitution.")

**153. Previous sanction of Governor-General to legislation with respect to Reserve Bank, currency and coinage.—**No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved

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in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

**154. Exemption of certain public property from taxation.**

**155. Exemption of provincial Governments and Rulers of Federated States in respect of Federal taxation.**

NOTES :—This Section is new. There was no corresponding provision in the Bill. In respect of the Clause in the Bill providing for exemption of Federal property from taxation in a Province or State, the Princes' Note contained the following remark:— "Reciprocity demands that States' properties like Government Securities should be exempted from income-tax and other forms of taxation." To this Sir Samuel Hoare replied, "It would not be possible to exempt from local taxation all property owned by a State in British India, but His Majesty's Government are willing to consider the insertion of provisions in the Bill to prevent the abolition at any time of the existing immunity from taxes and moneys invested in Government Securities by a State Durbar or by a Provincial Government".

**156. Adjustment in respect of certain expenses and pensions.**

**157. Duty of Federation and Provinces to supply Secretary of State with funds.**

**158. Provisions as to relation of Burma monetary system with India.**

**159. Relief in respect of tax on income taxable both in India and Burma.**

**160. Provisions as to customs duties on India-Burma trade.**

CHAPTER II.

**Borrowing and Audit.**

*Borrowing.*

**161.** Cessation of borrowing by Secretary of State in Council.

NOTE:— See Section 315 (1) below.

**162.** Borrowing by Federal Government.

**163.** Borrowing by Provincial Governments.

**164.** Loans by Federal Government to Federated States.

**165.** Application of Colonial Stock Acts to stocks issued by Federation.

*Audit and Accounts.*

**166.** Auditor-General of India.

**167.** Provincial Auditor-General.

**168.** Power of Auditor-General of India to give directions as to accounts.

**169.** Audit reports.

**170.** Auditor of Indian Home Accounts.

**171.** Audit of accounts relating to the discharge of the functions of the Crown in relation to Indian States.

CHAPTER III.

**Property, Contracts, Liabilities and Suits.**

**172.** Vesting of lands and buildings.

**173.** Provisions as to other property.

See notes on S. 185.

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174. Property accruing by escheat or lapse, or as bona vacantia.

175. Power to acquire property and to make contracts, &c.

176. Suits and proceedings. — (1) The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

177. Existing contracts of Secretary of State in Council.

178. Special provisions as to existing loans, guarantees and other financial obligations.

179. Legal proceedings as to certain matters.

180. Contracts in connection with functions of Crown in its relations with Indian States.

**CHAPTER VI.**  
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**PART VIII.**

**THE FEDERAL RAILWAY AUTHORITY.**

**181. Executive authority in respect of railways to be exercised by Federal Railway Authority.**

**182. Composition, &c. of Railway Authority. — (1)** Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

**183. Directions and principles to be observed by Railway Authority:—(1)** The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

**184. Conduct of business between Railway Authority and Federal Government.**

**185. Acquisition and sale of land, contracts and working agreements.**

**NOTES:—**The Princes' Memo contained the following remark:—"In the matter of railways also the Indian States are being asked to waive their jurisdiction over lands ceded only for construction of railways, and though retrocession of such jurisdiction is being demanded during the last 15 years, the claim has not yet been met. There is no reason why the

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Courts in a British Indian Province should exercise such jurisdiction in the territories of Indian States simply because they are traversed by a railway. This cession of jurisdiction over railway lands, lest it becomes perpetual and under Clause 169 of Bill (corresponding in some respects to Section 173) is claimed by way of succession by future federal or Provincial Governments, should be retroceded without further delay..... Retrocession of jurisdiction over railway lands should precede accession to the federation and prevent the descent by way of succession of such jurisdiction from the Governor-General in Council to the Federal Government".

**186. Finance of the Railway Authority:—**(1) The Authority shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund:

Provided that nothing in this subsection shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.

**187. Provisions as to certain obligations of the Railway Authority.**

**188. Investment of funds of Railway Authority.**

**189. Special provisions as to certain existing funds.**

**190. Audit and annual reports.**

**191. Railway Rates Committee:**—The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee.

**192. Bills and amendments for regulating rates and fares to require recommendation of Governor-General.**

**193. Obligation of Railway Authority and Federated States to afford mutual traffic facilities and to avoid unfair discrimination, &c.**

**194. Appeal by State to Railway Tribunal from certain directions of Railway Authority:**—If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic or maximum or minimum rates and fares or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal

NOTES ON SECTIONS 193 AND 194 :—The Princes' Note contained the following remark, "They (the States) could not agree to subordinate the interests of their own railways to the dictates of another railway authority on which they had no standing. The statutory Railway Authority can only be one co-ordinate with and not superior to their own Railway Board. As regards the points agreed to be federal, the Federal Railway Tribunal ought also to be one available to both sides and not one to which the Railway authorities of the State had always

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to take recourse, like a plaintiff, with the burden of proof placed on their shoulders.’

### 195. Construction and reconstruction of railways.

**196. Railway Tribunal:—**(1) There shall be a Tribunal (in this Act referred to as ‘the Railway Tribunal’) consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

(2) The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period:

Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment



of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

197. Rights of railway companies in respect of arbitration under contracts.

198. Railways in Indian States which have not federated.

199. Official directors of Indian railway companies.

## PART IX.

### THE JUDICATURE.

#### CHAPTER I.

#### The Federal Court.\*

200. Establishment and constitution of Federal Court.

—(1) There shall be a Federal Court consisting of a Chief

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\*"A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of

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Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years :

Provided that—

- (a) a judge may by resignation under his hand addressed to the Governor-General resign his office ;
- (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

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disputes between the constituent units of the Federation. The establishment of a Federal Court is partly of the White Paper Scheme, and we approve generally of the proposals with regard to it.”—J. P. C. Report.

“Judicial umpiring in constitutional issues is the essence of Federalism” — Mr. E. S. Sunda in his book “The Federal Court of India—A Constitutional Study.”

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

- (a) has been for at least five years a judge of a High Court in British India or in a Federated State; or
- (b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or
- (c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession.

Provided that—

- (i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader; and
- (ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this subsection to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the

## THE GOVERNMENT OF INDIA ACT, 1935. (Contd.)

Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

NOTES:—"In the Australian Act, the Parliament is given the power to decide the number, and the maximum is not fixed."

"In the North America Act the judges are to hold office during good behaviour. The Australian Act makes 'proved misbehaviour or incapacity' as ground for removal." Mr. E. S. Sunda in the 'Federal Court of India'

### 201. Salaries, &c. of judges.

### 202. Temporary appointment of acting Chief Justice.

203. **Seat of Federal Court:**—The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor General, from time to time appoint.

204 **Original jurisdiction of Federal Court:**—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends ;

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that state of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

**205. Appellate jurisdiction of Federal Court in appeals from High Courts in British India:—**(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

**206. Power of Federal Legislature to enlarge appellate jurisdiction:—**(1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the

Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

**207. Appellate Jurisdiction of Federal Court in appeals from High Courts in Federated States:—** (1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

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(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

**208. Appeals to His Majesty in Council :—** An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

### **209. Form of judgment on appeal.**

**210. Enforcement of decrees and orders of Federal Court and orders as to discovery, &c :—** (1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the 'attendance' of any 'person',



the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section—

- (a) shall apply to any such orders with respect to costs as is mentioned in subsection (2) of the last preceding section; or
- (b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

**211. Letters of request to Federated States:—** Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

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**212. Law declared by Federal Court and Privy Council to be binding on all courts:—** The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

**213. Power of Governor-General to consult Federal Court:—** (1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

**NOTE:—**The preponderance of opinion among American lawyers is hostile to the idea of 'advisory opinions' on the ground that the giving of such opinions is not an appropriate judicial function.....But the advisory nature of jurisdiction is so good that attempts should be made to see that such a relief is possible to be availed of by the private suitors also and not by the Governor-General alone" (Mr. E. S. Sunda in "The Federal Court of India")

"It is proposed that the Federal Court shall have a jurisdiction similar to that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833, which provides that His Majesty may refer to the committee for hearing and consideration any matters whatsoever as His Majesty may think fit, and that the committee shall thereupon hear and consider the same and shall advise His Majesty thereon." (J.P.C. Report) "Procedure under this Judicial Committee Act 1833, differs from that under Section 213 in one respect—dissenting judgments are not delivered in the Privy Council. In allowing expression of dissent the Federal Court follows the practice of the International Court at the Hague." (Eddy and Lawton in "India's New Constitution.")

**214. Rules of court, &c.**

**215. Ancillary powers of Federal Court.**

**216. Expenses of Federal Court.**

**217. Construction of references to High Courts in States.**

**218. Savings.**—Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave.

## CHAPTER II.

### The High Courts in British India.

**219. Meaning of "High Court."**—(1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the

## THE GOVERNMENT OF INDIA ACT, 1935. (Contd.)

High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act:

Provided that, if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any court or courts mentioned in this subsection, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) The provisions of this chapter shall apply to every High Court in British India.

**220. Constitution of High Courts:—**(1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as His Majesty may from time to time deem it necessary to appoint:

Provided that the judges so appointed together with any additional judges appointed by the Governor General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that court.

(2) Every judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual

and shall hold office until he attains the age of sixty years: .

Provided that —

- (a) a judge may by resignation under his hand addressed to the Governor resign his office;
- (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of a High Court unless he—

- (a) is a barrister of England or Northern Ireland, of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or
- (b) is a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge; or
- (c) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court; or
- (d) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession:

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member

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of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a judge of a High Court.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

**221. Salaries, &c. of judge:.**

**222. Temporary and additional judges.**

**223. Jurisdiction of existing High Courts:—** Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall

be the same as immediately before the commencement of Part III of this Act.

**224. Administrative functions of High Courts.**

**225. Transfer of certain cases to High Court for trial.**

**226. Jurisdiction in revenue matters.**

**227. Proceedings of High Courts to be in English.**

**228. Expenses of High Courts.**

**229. Power of His Majesty to constitute or reconstitute High Court by letters patent.**

**230. Extra-provincial jurisdiction of High Courts:—**

(1) His Majesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area in British India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—

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- ... (a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction; or
- (b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

### 231. Saving and definitions.

## PART X

### THE SERVICES OF THE CROWN IN INDIA

#### CHAPTER I.

#### Defence Services.

#### 232. Pay, &c., of Commander-in-Chief.

#### 233. Control of His Majesty as to defence appointments.

#### 234. Eligibility for commissions in Indian Forces.

#### 235. Control of Secretary of State with respect to conditions of service.

#### 236. Saving of rights of appeal.

#### 237. Pay, &c., of members of forces to be charged on Federal revenues.

#### 238. Provisions as to certain civilian personnel.

#### 239. King's India cadetships:—In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment



of sons of persons who have served in India in the military or civil service of the Crown.

In this section the reference to persons who have served in India in the military or civil service of the Crown includes persons who have so served in Burma or in Aden before their respective separations from India.

## CHAPTER II.

### Civil Services.

#### *General Provisions.*

**240. Tenure of office of persons employed in civil capacities in India:—**(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this subsection shall not apply—

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that

for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

**241. Recruitment and conditions of service:—**(1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made—

(a) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct;

(b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in

a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

- (a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;
- (b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure—

- (a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of

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March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;

(b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;

(c) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil

capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act :

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection.

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable :

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

**242.** Application of preceding section to railway, customs, postal and Telegraph services, and officials of courts.

**243.** *Special provisions as to police.*

*Recruitment by Secretary of State and provisions as to certain posts*

**244.** *Services recruited by Secretary of State:—* (1) As from the commencement of Part III of this Act appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil), and the Indian Police Service (which last-mentioned service shall thereafter be

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known as "the Indian Police") shall, until Parliament otherwise determines, be made by the Secretary of State.

245. Special provision as to irrigation.

246. Reserved posts.

247. Conditions of service, pensions, &c. of persons recruited by Secretary of State.

248. Rights in respect of complaints appeals &c.

249. Compensation.

*Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.*

250. Application of four last preceding sections to persons appointed by Secretary of State in Council, and certain other persons.

251. Staff of High Commissioner and Auditor of Indian Home Accounts.

252. Conditions of service of existing staff of High Commissioner and Auditor of Indian Home Accounts.

253. Judges of the Federal Court and High Courts.

254. District judges, &c.

NOTES :— The J. P. C. Report wrote, " A strict rule ought in our opinion to be adopted and enforced, though it would be clearly out of place in the Constitution Act itself, that recommendations from, or attempts to exercise influence by members of the Legislature in the appointment or promotion of any member of the Subordinate Judiciary are sufficient in themselves to disqualify a candidate, whatever his

personal merits may be. We would admit no exception to this rule, which has for many years past been accepted without question in the Civil Service of the United Kingdom.

"A recommendation by the Minister for the appointment of a member of the Subordinate Judicial Service should only be made with the approval of the Public Service Commission and of the High Court."

#### 255. Subordinate civil judicial service.

Notes:— "Candidates should be selected for appointment by the Public Service Commission, in consultation with the High Court, subject to any general regulations made by the Provincial Government as to the observance of communal proportions..... The Public Service Commission would of course act in an advisory capacity only, but we cannot conceive that any Minister would reject their advice or recommend an appointment without it." ( J. P. C. R. ).

#### 256. Subordinate criminal magistracy.

Notes:— "Candidates for a first appointment to these posts should be selected by the Governor on the recommendation of the Minister " ( J. P. C. R. ).

#### *Special Provisions as to Political Department.*

257. Officers of political department :—(1) Subject to the provisions of this section, the provisions of this Part of this Act shall not apply in relation to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States.

#### *Provisions for the protection of certain existing officers.*

258. Provision for protection of existing officers of certain Services.

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**259. Provisions as to certain persons serving in or before 1924.**

**260. General provisions as to persons retiring before commencement of Part III.**

*Miscellaneous.*

**261. Secretary of State to act with concurrence of his advisers.**

**262. Eligibility for office of persons who are not British subjects :—**(1) The Ruler or a subject of a Federated State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor-General may declare that the Ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any such office, being an office specified in the declaration.

(2) The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified in the declaration.

(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is



appointed to such a service, shall be eligible to hold any civil office under the Crown in India.

(4) Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India:

Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.

(5) In the discharge of his functions under this section the Governor-General or the Governor of a Province shall exercise his individual judgment.

#### **263. Joint services and posts.**

### **CHAPTER III.**

#### **Public Service Commissions.**

#### **264. Public Service Commissions.**

**265. Composition and staff of Commissions: — (1)** The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion:

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.

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(2) In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations—

- (a) determine the number of members of the commission, their tenure of office and their conditions of service; and
  - (b) make provision with respect to the numbers of staff of the commission and their conditions of service.
- (3) On ceasing to hold office—
- (a) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India;
  - (b) the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India;
  - (c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.

**266. Functions of Public Service Commissions:—** (1)  
It shall be the duty of the Federal and the Provincial

Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

**267. Power to extend functions of Public Service Commissions.**

**268. Expenses of Public Service Commissions.**

#### CHAPTER IV.

##### Chaplains.

**269. Provisions as to chaplains.**

#### CHAPTER V.

##### General.

**270. Indemnity for past acts:—**(1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act

done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

**271. Protection of public servants against prosecution and suits:—**(1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

**272. Provisions as to payment of certain pensions and exemption of those pensions from taxation in India.**

**273. Provisions as to family pension funds.**

**274. Saving for certain Funds Acts.**

**275. Persons not to be disqualified by sex for holding certain offices.**

**276. Transitional provisions.**

**277. Interpretation, &c.**

## **CHAPTER VII.**

### **THE GOVERNMENT OF INDIA ACT, 1935. (Contd).**

#### **PART XI**

#### **THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT.**

**278. Advisers to Secretary of State:—** (1) There shall a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that—

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State;

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(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter.

**279. Existing accounts of Secretary of State in Council with Bank of England.**

**280. Organisation and expenses of India Office:—** (1)  
As from the commencement of Part III of this Act the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament.

**281. Transfer of existing personnel.**

**282. Contributions from revenues of Federation.**

**283. Liability for pensions in respect of service before commencement of Part III.**

**284. Provision as to certain India Office provident funds.**

## PART XII.

### MISCELLANEOUS AND GENERAL.

#### *The Crown and the Indian States.*

**285. Saving for rights and obligations of the Crown in its relations with Indian States.** Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

There are altogether forty States which have got treaties with the British. They are:—Alwar (1803); Bahawalpur (1838); Banswara (1818); Baroda (1805); Bharatpur (1805); Bhopal (1818); Bikanir (1818); Bundi (1818); Cochin (1809); Cutch (1819); Datia (1818); Dewas (Senior, & Junior) (1818); Dhar (1819); Dhoa (1806); Gwalior (1804 and 1844); Hyderabad

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(1800) and (1853) Indore (1818); Jaipur (1818); Jaisalmer (1818); Jammu and Kashmir (1846); Jhalawar (1838); Jodhpur (1818); Kalat (1876); Karauli (1817); Khairpur (1838); Kishengarh (1818); Kolhapur (1812); Kotah (1817); Mysore (1881) and (1913); Orchha (1812); Partapgarh (1818); Rampur (1794); Rewa (1812); Samthar (1817); Sawantwari (1819); Sikkim (1814); Sirohi (1823); Travancore (1805); Tonk (1817); Udaipur (1818).

—(Prof. G. N. Singh: Indian States and British India.)

The Princes' Note contained the following observations:—  
“If the Rulers delegated certain portions of their sovereignty and internal jurisdiction to the Crown, they also expected that the Crown would accept liability to preserve and safeguard the whole of their sovereignty and internal autonomy not specifically thereby safe-guarded from any encroachment in the future.....Amendments and alterations made with mutual consent and the free volition of both parties no doubt may supplant and take the place of old treaties. As *novatio*, the altered treaties are equally binding; but there ought to be no room for any continuous erosive action hereafter from usage, sufferance, acquiescence, political practice or ultimate powers of paramountcy so as to undermine the essence and the substance from below of these sacred treaties.

...

...

...

In conclusion it should be well to remember that the Princes had originally accepted the invitation to federate out of their anxious desire to be of service to the Empire.”

Sir Samuel Hoare wrote:—“His Majesty's Government understand that the States feel apprehensive as regards the effect of their acceptance of the legislative and executive authority of the Federation in certain matters upon their relations with the Crown in other matters; and these apprehensions



have no doubt also influenced Their Highnesses in the claim made in paragraph 9 of their Note that the Bill should reproduce in some form the provisions of Section 132 of the existing Government of India Act, which provides that all treaties made by the East India Company are, so far as they are in force at the commencement of the Act, binding on His Majesty.

This Section appeared first in the Government of India Act 1858, where it was obviously required by reason of the transfer which that Act effected of all rights and obligations of the East India Company to the Crown; and it was only re-enacted in the Government of India Act 1915, because that Act consolidated existing Statutes relating to India, and not because it was thought necessary to re-affirm obligations which the Crown had already assumed. The Crown's engagements towards the Indian Rulers need no re-affirmation by Parliament. But His Majesty's Government are prepared, if the Rulers so desire, to consider the insertion in this Bill of a provision to the effect that nothing in the Act will affect the engagements of the Crown outside the Federal sphere. If, in addition, some States desire a re-affirmation of the engagements of the Crown towards them so far as they relate to matters outside the Federal sphere, this would, as on other occasions, more appropriately take some extra-statutory form, and His Majesty's Government will consider how best a satisfactory assurance would perhaps most conveniently be given at the time when the execution of Instruments of Accession is accepted by His Majesty".

On the question of Paramountcy the Princes' Note contained the following:—

"The Chamber of Princes have from the very outset urged a satisfactory settlement of the claims of paramountcy

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to be a condition precedent to the accession of the States to any Federation. Among the essential conditions they had laid down from time to time, the one treating with a definition of paramountcy had been made a *sine qua non* to any Federation. They have consistently asked that "the sovereignty and autonomy of their States shall be fully respected and guaranteed, and there shall be no interference, direct or indirect, with the internal autonomy of their States." It is regretted that no effective steps have been taken, so far, to reach a settlement of the question of paramountcy, which has justly been considered by the princes to be one of vital importance. It is true that, as stated by the Secretary of State in his recent pronouncement, the Princes had never desired the inclusion of the question of paramountcy in the Constitution Act, but this does not mean that they have not repeatedly emphasized that its settlement is a condition precedent to their entry into Federation".

His Highness the Maharaja of Patiala's resolution adopted by the Chamber of Princes was as follows:—

"The Chamber wishes to emphasize that the inauguration and success of the Federation will depend entirely on the goodwill and co-operation of all parties concerned and upon the clear recognition of the Sovereignty of the States and their rights under treaties and engagements."

On the question of sovereignty Mr. Panikkar wrote:—  
"The juristic theory of an absolute, undivided final authority, has had no historical experience to back it.....  
There can be no doubt that within the limits set by the agreements that define their relation with the British Government, Indian rulers are sovereigns by every criterion of political science".

Sir T. B. Sapru stated in the closing sessions of the Federal Structure Committee:—"The question of paramountcy in relation to the Crown is one thing and in relation to the Federation is quite a different thing. There can be no such thing under a Federal Constitution as one paramount unit of the Federation exercising paramountcy over another unit of the Federation. Their basis of Federation is equality '.

Under Transitory Provisions the J. P. C. Report said:—"From the date of the inauguration of Provincial Autonomy the Governor-General should become solely responsible for the control of the relations between the Crown and the States '.

**286. Use of His Majesty's forces in connection with discharge of the functions of the Crown in its relations with Indian States:—**(1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

**NOTES:—**Sir Samuel Hoare wrote:—"The State Ministers ask firstly for specific provision that "the authority of the Federation should extend to placing at the service of the Crown the means of implementing the Crown's obligations to the States," in other words that military forces should be

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available for the protection of the States. It is believed that the provisions of the Bill are adequate for this purpose, but the matter is being re-examined to make sure that there is no room for doubt upon the point, to which His Majesty's Government attach much importance. '

**287. Arrangements for Governors and Provincial staff to assist in discharging functions of Political Department.**

*Aden.*

**288. Aden.**

*New Provinces and alterations of boundaries of Provinces.*

**289. Creation of new Provinces of Sind and Orissa.**

**290. Creation of new Provinces and alterations of boundaries of Provinces.**

*Franchise.*

**291. Power of His Majesty to make provision with respect to franchises and elections:—**In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may from time to time make provision with respect to those matters or any of them, that is to say—

- (a) the delimitation of territorial constituencies for the purpose of elections under this Act;
- (b) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls;
- (c) the qualifications for being elected at such elections as a member of a legislative body;

- (d) the filling of casual vacancies in any such body;
- (e) the conduct of elections under this Act and the methods of voting thereat;
- (f) the expenses of candidates at such elections;
- (g) corrupt practices and other offences at or in connection with such elections;
- (h) the decision of doubts and disputes arising out of, or in connection with, such elections;
- (i) matters ancillary to such matter as aforesaid.

NOTES:—"The Provincial electorate under the existing franchise numbers approximately seven million men and women.....The Statutory Commission were of opinion that the existing franchise was too limited, and recommended that it should be extended so as to enfranchise about ten per cent of the population and they laid special emphasis upon "the need of increasing the ratio of women to men voters." The Round Table Conference suggested about 25% to be enfranchised. "It is estimated that the proposals in the White Paper (partly based on the Franchise Committee Report) would, if adopted, create a male electorate of between 28 millions and 29 millions and a female electorate of over 6 millions as compared to the present figures of 7 millions and 3,15,000 respectively." (J- P. C. R )

*Provisions as to certain legal matters.*

**292.** Existing law of India to continue in force.

**293.** Adaptation of existing Indian laws, &c.

**294. Foreign jurisdiction:—**(1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a

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Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this subsection should apply, and references in this Act to a Federated State shall not be construed as including references to any such area :

Provided that—

- (a) a declaration shall not be made under this subsection with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice has been given to him of His Majesty's intention to make that declaration;
- (b) if His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State.

Nothing in this subsection applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the State, exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a Court or an authority exercising the power or jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted :

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of five years from the date when the accession of the State becomes effective.

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(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction Act, 1890, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order.

Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of courts or administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890, the expression "a British court in a foreign country" shall, in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section



nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

(8) Nothing in this section affects the provisions of this Act with respect to Berar.

NOTES:—Referring to foreign jurisdiction in an Assigned Tract, Lord Reading said in the course of a speech delivered during the Viceregal visit to Bangalore in 1923:—

“This tract, you are aware, is not British India, but is a portion of an Indian State assigned to the Government of India to be held and administered as a Military Station. The permanent status of the tract is that of an integral part of Mysore State, though for a special reason, the administration of this portion of State territory is carried on by a British Resident responsible to the Government of India.”

#### 295. Provisions as to death sentences.

#### 296. Courts of Appeal in revenue matters.

297. Prohibition of certain restrictions on internal trade :—(1) No Provincial Legislature or Government shall—

- (a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or

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take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description; or

- (b) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.

**298. Persons not to be subjected to disability by reason of race, religion, &c. :—**(1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.

**299. Compulsory acquisition of land &c. :—**(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in,

or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

**300. Protection for certain rights, privileges, and pensions.**

**301. Repeal of s. 18 of 21 Geo. 3, c. 70, and s. 12 of 37 Geo. 3. c. 142. (some obsolete enactments)**

*High Commissioner.*

**302. High Commissioner for India:—**(1) There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgment.

(2) The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and, in particular, in relation to the making of contracts as the Governor-General may from time to time direct.

*General Provisions.*

**303. Provisions as to Sheriff of Calcutta.**

**304. Persons acting as Governor-General or Governor.**

**305. Secretarial staffs of Governor-General and Governor.**

**306. Protection of Governor-General, Governor or Secretary of State.**

**307. Removal of certain disqualifications on the occasion of the first elections to Legislature.**

**308. Procedure as respects proposals for amendment of certain provisions of Act and Orders in council :—(r)** Subject to the provisions of this section, if the Federal Legislature or any Provincial Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motions proposed in like manner, present to the Governor-General or, as the case may be, to the Governor an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon.

The Governor-General or the Governor, as the case may be, when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interests of any minority, together with a report as to the views of any minority likely to be affected by the proposed amendment and as to whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament.

In performing his duties under this subsection the Governor-General or the Governor, as the case may be, shall act in his discretion.

(2) The amendments referred to in the preceding subsection are—

- (a) any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the council of State or the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States;
- (b) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature;
- (c) any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf; and
- (d) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

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(3) So far as regards any such amendment as is mentioned in paragraph (c) of the last preceding subsection, the provisions of subsection (1) of this section shall apply to a resolution of a Provincial Legislature whenever passed, but, save as aforesaid, those provisions shall not apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and, in the case of a resolution of a Provincial Legislature, from the commencement of Part III of this Act.

(4) His Majesty in Council may at any time before or after the commencement of Part III of this Act, whether the ten years referred to in the last preceding subsection have elapsed or not, and whether any such address as is mentioned in this section has been submitted to His Majesty or not, make in the provisions of this Act any such amendment as is referred to in subsection (2) of this section :

Provided that—

- (i) if no such address has been submitted to His Majesty, then, before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Governments and Legislatures in India, who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives

of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal;

- (ii) the provisions of Part II of the First Schedule to this Act shall not be amended without the consent of the Ruler of any State which will be affected by the amendment.

**Notes:**—"By constituent powers" we mean powers conferred by the Constitution Act upon some authority other than Parliament to vary specified provisions of the Act, whether or not such variation is required by the Act to be subject to the approval of Parliament." (J. P. C. R.)

**309. Orders in Council:**—Any power conferred by this Act on His Majesty in Council shall be exercisable only by Order in Council, and subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Act, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolutions of both Houses :

Provided that, if at any time when Parliament is dissolved or prorogued, or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under this Act forthwith, it shall not be necessary for a draft of the Order to be laid

## THE GOVERNMENT OF INDIA ACT, 1935. (Contd.)

before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

(2) Subject to any express provision of this Act, His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the preceding subsection, revoke or vary any Order previously made by him in Council under this Act.

(3) Nothing in this section applies to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any Order of His Majesty in Council sanctioning the taking of proceedings against a person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, the Governor of a Province or the Secretary of State.

**310. Power of His Majesty in Council to remove difficulties.**

*Interpretation.*

**311. Interpretation, &c.**

"Indian State" includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to or under the suzerainty of a Ruler<sup>o</sup> who is under the suzerainty of His Majesty and not being part of British India;

"Ruler" in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State.



“railway” includes a tramway not wholly within a municipal area;

“federal railway” does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway;

“Indian State railway” means a railway owned by a State and either operated by the State or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Federal Government, the Federal Railway Authority, or any company operating a federal railway;

“minor railway” means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not.

## PART XIII.

### TRANSITIONAL PROVISIONS.

312. Operation of Part XIII.

313. Executive Government.

314. Control of the Secretary of State.

315. Sterling loans:—(r) While this Part of this Act is in operation, no sterling loans shall be contracted by the Governor-General in Council, but in lieu thereof, if provision is made in that behalf by an East India Loans Act of the Parliament of the United Kingdom, the Secretary of State may, within such limits as may be prescribed by the Act,

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contract such loans on behalf of the Governor-General in Council.

### 316. Legislature.

**317. Continuance of certain provisions of Government of India Act:—**(1) The provisions of the Government of India Act set out, with amendments consequential on the provisions of this Act, in the Ninth Schedule to this Act (being certain of the provisions of that Act relating to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to have effect notwithstanding the repeal of that Act by this Act :

**318. Provisions as to Federal Court and certain other Federal authorities:—**(1) Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names, and shall perform in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established.

**319. Rights and liabilities of Governor-General in Council and Governor-General to continue after establishment of Federation.**

## PART XIV.

### \*COMMENCEMENT, REPEALS, &c.

#### 320. Commencement.

#### 321. Repeals.

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\*See Summary.

# CHAPTER VIII

## THE GOVERNMENT OF INDIA ACT, 1935.

### SCHEDULES.

#### FIRST SCHEDULE.

##### COMPOSITION OF THE FEDERAL LEGISLATURE.

###### PART I.

###### REPRESENTATIVES OF BRITISH INDIA.

... ..

*The Federal Assembly.*

... ..

20. The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governor's Province for members of the scheduled castes.--

For the purposes of a general election of members of the Federal Assembly,--

- (a) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the Fifth Schedule to this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes,
- (b) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved; and

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- (e) no person who is not so elected as a candidate shall be qualified to be chosen to fill such a seat.

21. For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an Electoral College consisting of such women as are members of the Legislative Assembly of any Governor's Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the College.

Rules regulating the conduct of elections by the women's Electoral College shall be such as to secure that, of the nine women's seats allotted to Provinces, at least two are held by Muhammadans and at least one by an Indian Christian.

22. For the purpose of choosing persons to fill the Anglo-Indian, European and Indian Christian seats in the Federal Assembly, there shall be for British India three Electoral Colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian Christian seat in the Legislative Assembly of any Governor's Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college.

In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian Electoral College shall vote in accordance with the principle of proportional representation by means of the single transferable vote.

23. Persons to fill the seats in the Federal Assembly which are to be filled by representatives of commerce and industry, landholders and representatives of labour shall be chosen—

- (a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed;
- (b) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed;
- (c) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies and in accordance with such manner of voting as may be prescribed;
- (d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed; and
- (e) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed.

24. Persons to fill the seats in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall be chosen—

- (a) in the case of Coorg, by the members of the Legislative Council; and

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- (b) in other cases in such manner as may be prescribed.

25. A person shall not be qualified to hold a seat in the Federal Assembly, unless—

- (i) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian Christian seat or a woman's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold a seat of the same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province ;
- (ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

*General.*

26. (1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say :—

“ a European ” means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India;

“ an Anglo-Indian ” means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India ;

“ an Indian Christian ” means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;

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“the scheduled castes” means such castes, races or tribes or parts of or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as “the depressed classes,” as His Majesty in Council may specify.

### TABLE OF SEATS.

*The Council of State.*

*Representatives of British India.*

#### *Allocation of seats.*

1	2	3	4	5	6	7
Province or Community.	Total seats.	General seats.	Seats for Scheduled Castes.	Sikh seats.	Muham- madan seats.	Women's seats.
Madras ... ..	20	14	1	...	4	1
Bombay ... ..	16	10	1	...	4	1
Bengal ... ..	20	8	1	...	10	1
United Provinces ... ..	20	11	1	...	7	1
Punjab ... ..	16	3	...	4	8	1
Bihar ... ..	16	10	1	...	4	1
Central Provinces and Berar ... ..	8	6	1	...	1	...
Assam ... ..	5	3	...	...	2	...
North-West Frontier Province ... ..	5	1	...	...	4	...
Orissa ... ..	5	4	...	...	1	...
Sind ... ..	5	2	...	...	3	...
British Baluchistan ... ..	1	...	...	...	1	...
Delhi ... ..	1	1	...	...	...	...
Ajmer-Merwara ... ..	1	1	...	...	...	...
Coorg ... ..	1	1	...	...	...	...
Anglo Indians ... ..	...	...	...	...	...	...
Europeans ... ..	7	...	...	...	...	...
Indian Christians ... ..	2	...	...	...	...	...
Totals ... ..	150	75		4	49	6

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TABLE OF SEATS.  
The Federal Assembly.  
Representatives of British India.

1	2	3	4	5	6	7	8	9	10	11	12	13	
Province.	Total Seats.	General Seats.			Sikh Seats.	Muhammadan Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats.	Seats for representatives of commerce and industry.	Land-holders Seats	Seats for representatives of labour.	Women's Seats.
		Total of General seats.	General seats reserved for Scheduled Castes.										
Madras ...	37	19	4	...	8	1	1	1	2	...	1	1	2
Bombay ...	30	13	2	...	6	1	1	1	1	3	1	1	1
Bengal ...	37	10	3	...	17	1	1	1	1	3	2	1	1
United Provinces ...	37	19	3	...	12	1	1	1	1	...	1	1	1
Punjab ...	30	6	1	...	14	...	1	1	1	...	1	1	1
Bihar ...	30	16	2	...	9	...	1	1	1	...	1	1	1
Central Provinces and Berar	15	9	2	...	3	...	1	...	1	...	1	1	1
Assam ...	10	4	1	...	3	...	...	...	...	...	1	1	1
North-West Frontier Province	5	1	...	...	4	...	...	...	...	...	...	...	...
Orissa ...	5	4	1	...	1	...	...	...	...	...	...	...	...
Sind ...	5	1	...	...	3	...	1	...	...	...	...	...	...
British Baluchistan	1	1	...	...	1	...	...	...	...	...	...	...	...
Delhi ...	2	1	...	...	1	...	...	...	...	...	...	...	...
Ajmer-Merwara	1	1	...	...	...	...	...	...	...	...	...	...	...
Coorg ...	1	1	...	...	...	...	...	...	...	...	...	...	...
Noo-Provincial Seats	4	...	...	...	...	...	...	...	...	3	...	1	...
Totals ...	250	105	19	6	82	4	8	8	11	7	10	9	



PART II.

REPRESENTATIVES OF INDIAN STATES.

4. A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he—

- (i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and
- (ii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age:

Provided that—

(a) the Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers, that sub-paragraph (i) of this paragraph shall not apply to any named subject, or to subjects generally, of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers; and

(b) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

6. Subject to the special provisions hereinsfater contained with respect to the appointment of persons to represent certain States and groups of States comprised in Divisions XVI and XVII of the Table of Seats,—

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- (i) the Rulers of States constituting a group of States to which a seat in the Council of State is allotted in rotation appoint a person to fill that seat; and
- (ii) the Rulers of the States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat:

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

7. The period for which a person shall be appointed to fill a seat shall be—

- (i) in the case of a person appointed to fill a seat in the Council of State—
  - (a) by the Ruler of a State entitled to separate representation, nine years,
  - (b) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years;
  - (c) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned;
  - (d) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the

periods for which each of them might in rotation have appointed a person to hold that seat or three years, whichever may be the shorter period;

- (a) in any other manner, three years; and
- (ii) in the case of a person appointed to fill a seat in the Federal Assembly, until the dissolution of the Assembly:

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph, be entitled to appoint that person to fill the seat—

- (a) in the case of the Rulers of Panna and of Mayurbhanj, for two years; and
- (b) in the case of the Ruler of Pudukkottai, for three years.

9. Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed:

Provided that in choosing a person to be so appointed the Ruler of a State mentioned in subparagraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the state mentioned in subparagraph (b) of that paragraph shall be entitled to three votes.

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10. A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject as hereinafter provided, so long as one tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appoint persons, not exceeding one-half of the number of seats so unfilled to be additional members of that Chamber:

Provided that the right to appoint such additional members shall not be exercised after the expiration of twenty years from the establishment of the Federation.

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

11. Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of each of the States in the group as have acceded to the Federation:

Provided that—

- (a) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled; and

- (b) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled; and
- (c) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled.

Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

12. The provisions of this paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the Table of Seats:—

- (a) the States in question are such States, being States which on the first day of January, nineteen hundred and thirtyfive, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor General in his discretion;
- (b) the Governor-General shall, in the rules so made by him, divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups;

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(c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation;

(d) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding subparagraph to fill seats in the Federal Assembly:

Provided that, so long as three of the five seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled;

(e) seats in the Federal Assembly or Council of State remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph.

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## TABLE OF SEATS.

*The Council of State and the Federal Assembly.*

*Representatives of Indian States.*

1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
		DIVISION I.		
Hyderabad ...	5	Hyderabad ...	16	14,436,148
		DIVISION II.		
Mysore ...	3	Mysore ...	7	6,557,302
		DIVISION III.		
Kashmir ...	3	Kashmir ...	4	3,646,243
		DIVISION IV.		
Gwalior ...	3	Gwalior ...	4	3,573,070
		DIVISION V.		
Baroda ...	3	Baroda ...	3	2,443,007
		DIVISION VI.		
Kalat ...	2	Kalat ...	1	342,101
		DIVISION VII.		
Sikkim ...	1	Sikkim ...	...	109,808

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1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
DIVISION VIII.				
1. Rampur ...	1	1. Rampur ..	1	465,225
2. Benares ...	1	2. Benares ...	1	391,272
DIVISION IX.				
1. Travancore ...	2	1. Travancore ...	5	5,095,973
2. Cochin ...	2	2. Cochin ..	1	1,205,016
3. Pudukkottai ...	1	3. Pudukkottai ...	1	400,694
Banganapalle ...		Banganapalle ...		39,218
Sandur ...		Sandur ...		13,583
DIVISION X.				
1. Udaipur ...	2	1. Udaipur ...	2	1,566,910
2. Jaipur ...	2	2. Jaipur ...	3	2,631,775
3. Jodhpur ...	2	3. Jodhpur ...	2	2,125,982
4. Bikaner ...	2	4. Bikaner ...	1	936,218
5. Alwar ...	1	5. Alwar ...	1	749,751
6. Kotah ...	1	6. Kotah ..	1	685,804
7. Bharatpur ...	1	7. Bharatpur ...	1	486,954
8. Tonk ...	1	8. Tonk ...	1	317,360
9. Dholpur ...	1	9. Dholpur ...	1	254,986
10. Karauli ...	1	Karauli ...		140,525
11. Bundi ...	1	10. Bundi ...	1	216,722
12. Sirohi ...	1	Sirohi ...		216,528
13. Dungarpur ...	1	11. Dungarpur ..	1	227,544
14. Banswara ...	1	Banswara ...		260,670
15. Partabgarh ...	1	12. Partabgarh ..	1	76,539
Jhalawar ...		Jhalawar ...		107,890
16. Jaisalmer ...	1	13. Jaisalmer ...	1	76,255
Kishengarh ...		Kishengarh ...		85,744



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1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
DIVISION XI.				
1. Indore ...	2	1. Indore ...	2	1,325,089
2. Bhopal ...	2	2. Bhopal ...	1	729,935
3. Rewa ...	2	3. Rewa ...	2	1,587,445
4. Datia ...	1	4. Datia ...	1	153,834
5. Orchha ...	1	Orchha ...		314,661
6. Dhar ...	1	5. Dhar ...	1	243,430
7. Dewas (Senior)	1	Dewas (Senior)		83,321
Dewas (Junior)		Dewas (Junior)	1	70,513
8. Jaora ...	1	6. Jaora ...	1	100,166
Ratlam ...		Ratlam ...		107,321
9. Panna ...	1	7. Panna ...	1	212,130
Samthar ...		Samthar ...		33,307
Ajaigarh ...	1	Ajaigarh ...	1	85,895
10. Bijawar ...		8. Bijawar ...		115,852
Charkhari ...	1	Charkhari ...	1	120,351
Chhatarpur ...		Chhatarpur ...		161,267
11. Baoni ...	1	9. Baoni ...	1	19,132
Nagod ...		Nagod ...		74,589
Maihar ...	1	Maihar ...	1	68,991
Baraundha ...		Baraundha ...		16,071
12. Barwani ...	1	10. Burwani ...	1	141,110
Ali Rajpur ...		Ali Rajpur ...		101,963
Shahpura ...	1	Shahpura ...	1	54,233
13. Jhabua ...		11. Jhabua ...		145,522
Sailana ...	1	Sailana ...	1	35,223
Sitamau ...		Sitamau ...		28,422
14. Rajgarh ...	1	12. Rajgarh ...	1	134,891
Narsingarh ...		Narsingarh ...		113,873
Khilchipur ...		Khilchipur ...		45,583

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1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
DIVISION XII.				
1. Cutch ...	1	1. Cutch ...	1	514,307
2 Idar ...	1	2. Idar ...	1	262,660
3. Nawanagar ...	1	3. Nawanagar ..	1	409,192
4. Bhavnagar ...	1	4. Bhavnagar ...	1	500,274
5. Junagadh ...	1	5. Junagadh ..	1	545,152
6. Rajpipla ...	1	6. Rajpipla ..	1	206,114
Palanpur ...		Palanpur ...		264,179
7. Dhrangadhra ...	1	7. Dhrangadhra ...	1	88,961
Gondal ...		Gondal ...		205,846
8. Porbandar ...	1	8. Porbandar ..	1	115,673
Morvi... ..		Morvi... ..		113,023
9 Radhanpur ...	1	9. Radhanpur ...	1	70,530
Wankauer ...		Wankauer ...		44,259
Palitana ...		Palitana ...		62,150
10. Cambay ...	1	10. Cambay ...	1	87,761
Dharampur ...		Dharampur ...		112,031
Balasinoi ...		Bulasinoi ...		52,525
11. Baria ...	1	11. Baria ...	1	159,429
Chhota Udepur ...		Chhota Udepur ...		144,640
Sant ...		Sant ...		83,531
Lunawada ...	1	Lanawada ...	1	95,162
12. Bansda ...		12. Bansda ...		48,839
Sachin ...		Sachin ...		22,107
Jawhar ...		Jawhar ...		57,261
Danta... ..	1	Danta... ..	1	26,196
13 Dhrol ...		Dhrol ..		27,639
Limbdi ...		Limbdi ...		40,088
Wadhwan ...		Wadhwan ...		42,602
Rajkot ...		Rajkot ...		75,540

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1	2	3	4	5
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
DIVISION XVI—cont.				
4. Gangpur ...	1	9. Dhenkanal ...	3	284,326
Bamra... ..		Nayagarh ...		142,406
Seraikela ...		Seraikela ...		143,525
Baud ... ..		Baud... ..		135,248
Bonai ... ..	1	Taleher ...	3	69,702
5. Bastar ...		Bonai ... ..		80,186
Surguja ...		Nilgiri ...		68,594
Raigarh ...		Bamra ... ..		151,047
Nandgaon ...	1	10. Raigarh ...	3	277,569
6. Khairagarh ...		Khairagarh ...		157,400
Jashpur ...		Jashpur ...		193,698
Kanker ... ..		Kanker ... ..		136,101
Korea... ..		Sarangarh ...		128,967
Sarangarh ...		Korea... ..		90,886
		Nandgaon ...		182,380
DIVISION XVII.				
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	5	3,032,197

Total population of the States in this Table: 78,981,912

### THIRD SCHEDULE.

#### PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES.

... ..

4. There shall be granted to and in respect of the Governor-General and the Governor of every Province such customs privileges as may be specified by Order in Council.

---

### FOURTH SCHEDULE.

#### FORMS OF OATHS OR AFFIRMATIONS.

... ..

#### 2.

Form of oath or affirmation to be taken or made by a member of a Legislature who is the Ruler of an Indian State:—

“ I, A. B., having been elected [ *or* nominated *or* appointed ] a member of this Council [ *or* Assembly ], do solemnly swear [ *or* affirm ] that I will be faithful and bear true allegiance in my capacity as Member of this Council [ *or* Assembly ] to his Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.”

3.

Form of oath or affirmation to be taken or made by a member of a Legislature who is a subject of the Ruler of an Indian State:—

“ I, A. B., having been elected [ or nominated or appointed ] a member of this Council [ or Assembly ], do solemnly swear [ or affirm ] that saving the faith and allegiance which I owe to C. D., his heirs and successors, I will be faithful and bear true allegiance in my capacity as Member of this Council [ or Assembly ] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.”

---

## FIFTH SCHEDULE.

### COMPOSITION OF PROVINCIAL LEGISLATURES.

#### *General qualification for Membership.*

1. A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

- (a) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed with respect to any Province, the Ruler or a subject of any prescribed Indian State; and
- (b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty years of age; and

THE GOVERNMENT OF INDIA ACT, 1935. (Schedules).

- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case.

...                      ...                      ...                      ...

12. A person shall not be qualified to hold a seat in the Legislative Assembly of a Province unless—

- (a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed; and
- (b) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province.

...                      ...                      ...                      ...

13. The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council the Governor in his discretion shall make by order such provision as he thinks fit, by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter.

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

## TABLE OF SEATS.

## Provincial Legislative Assemblies.

Province.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19																			
			General Seats			Seats for representatives of backward areas and tribes			Silb Seats.			Muhammadan Seats.			Anglo-Indian Seats			European Seats.			Indian Christian Seats																	
			General Seats reserved for Scheduled Castes.			Total of General Seats.			Total Seats.			Seats for representatives of commerce, industry, mining and planting.			Landholders Seats.			University Seats.			Seats for representatives of labour.			General.			Silb.			Muhammadan.			Anglo-Indian.			Indian Christian.		
Madras	...	...	215	146	30	1	...	28	2	3	8	6	1	6	6	...	1	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Bombay	...	...	175	114	15	1	...	29	2	3	3	7	2	7	2	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Bengal	...	...	250	78	30	...	...	117	3	11	2	19	5	3	5	...	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
United Provinces	...	...	228	140	20	...	...	64	1	2	2	3	6	1	3	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Punjab	...	...	175	42	8	...	...	84	1	1	2	1	5	3	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Bihar	...	...	152	86	15	...	...	39	1	2	1	4	4	1	3	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Central Provinces and Berar	...	...	112	84	20	1	...	14	1	1	1	2	3	1	3	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Assam	...	...	108	47	7	9	...	34	1	1	1	11	...	4	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
North-West Frontier Province	...	...	50	9	...	...	3	36	...	...	...	...	...	...	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Orissa	...	...	60	44	6	5	...	4	...	...	1	1	...	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Sind	...	...	60	18	...	...	...	33	...	2	...	2	...	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar.

In Assam and Orissa the seats reserved for women shall be non communal seats

TABLE OF SEATS.  
*Provincial Legislative Councils.*

1	2	3	4	5	6	7	8
Province.	Total of Seats.	General Seats.	Muslim Seats.	European Seats.	Indian Christian Seats.	Seats to be filled by Legislative Assembly.	Seats to be filled by Governor.
Madras ...	{ Not less than 54 Not more than 56 }	35	7	1	3	...	{ Not less than 8 Not more than 10 }
Bombay ...	{ Not less than 29 Not more than 30 }	20	5	1	...	...	{ Not less than 3 Not more than 4 }
Bengal ...	{ Not less than 63 Not more than 65 }	10	17	3	...	27	{ Not less than 6 Not more than 8 }
United Provinces ...	{ Not less than 58 Not more than 60 }	34	17	1	...	...	{ Not less than 6 Not more than 8 }
Bihar ...	{ Not less than 29 Not more than 30 }	9	4	1	...	12	{ Not less than 3 Not more than 4 }
Assam ...	{ Not less than 21 Not more than 22 }	10	6	2	...	...	{ Not less than 3 Not more than 4 }



SIXTH SCHEDULE.

PROVISIONS AS TO FRANCHISE.

PART 1.

*General.*

... ..

4. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent court.

5. No person shall be included in the electoral roll for a Sikh constituency, a Muhammadan constituency, an Anglo-Indian constituency, a European constituency or an Indian Christian constituency unless he is a Sikh, a Muhammadan, an Anglo-Indian, a European or an Indian Christian, as the case may be.

6. No person who is or is entitled to be included in the electoral roll for any Sikh constituency, Muhammadan constituency, Anglo-Indian constituency, European constituency or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province, or vote at any election to fill a general seat therein:

Provided that this paragraph shall not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the election of persons to fill those seats.

7. No person shall in any Province vote at a general election in more than one territorial constituency, and in each

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Provinces such provisions, if any, as may be prescribed in relation to that Province shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency in the Province:

Provided that, in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in this paragraph or in any such provisions shall prevent a person from being included in the electoral roll for, and voting at a general election in, one territorial constituency so formed and also one territorial constituency not so formed.

9. No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude, or imprisonment.

10. The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands—

- (a) a woman who, at the date of the death of her husband is included in an electoral roll for a territorial constituency by virtue of his qualifications shall, notwithstanding anything in the subsequent provisions of this Schedule, continue to be on the roll for that constituency unless she remarries or becomes disqualified under the foregoing provisions of this Schedule for inclusion in that roll;
- (b) not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications of any particular man and any question which of several women is to be selected

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for inclusion shall be determined in the prescribed manner :

Provided that, if a woman who is entitled by virtue of subparagraph (a) of this paragraph to remain on the roll of a territorial constituency changes her place of residence, then if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate.

### PART V

#### THE UNITED PROVINCES.

##### *General requirement as to residence.*

1—(1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

(2) For the purposes of this Part of this Schedule a person shall be deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling house therein ready for occupation in which he occasionally dwells.

##### *Qualifications dependent on taxation.*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was assessed during the previous financial year to income tax; or
- (b) was, in an area wholly or partly within the constituency in which a municipal tax is in force,

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assessed in the previous financial year to municipal tax on an income of not less than one hundred and fifty rupees per annum.

*Qualifications dependent on property.*

3. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is the owner or tenant of a house or building in the constituency the rental value whereof is not less than twenty-four rupees per annum.

4. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) owns land in the constituency on which land revenue of not less than five rupees per annum is payable ; or
- (b) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than five rupees per annum ; or
- (c) is a tenant of land in the constituency in respect of which rent of not less than ten rupees per annum, or rent in kind equivalent to not less than ten rupees per annum, is payable; or
- (d) is an under-proprietor in Oudh of land in the constituency in respect of which under-proprietary rent of not less than five rupees per annum is payable ; or

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- (e) in the case of a constituency comprising any part of the Hill Pattis of Kumsun, is resident in those Hill Pattis and, in the constituency, either is owner of a fee simple estate in those Hill Pattis, or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar.

### *Educational qualification.*

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the upper primary examination, or an examination which is prescribed as the equivalent thereof.

### *Qualification by reason of service in His Majesty's forces.*

6. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

### *Special provision as to Shilpkars in the Hill Pattis of Kumaun.*

7. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency comprising any part of the Hill Pattis of Kumaun if he is a Shilpkar resident in a village in those Hill Pattis and is in the prescribed manner selected and designated as their representative by the Shilpkar families of that village.

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*Additional qualifications for women.*

8. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's regular military forces; or
- (b) if she is proved in the prescribed manner to be literate; or
- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph.

9. In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) he is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than thirty-six rupees per annum; or
- (b) was, in an area in which no house or building tax is in force, assessed in the previous year in the constituency to municipal tax on an income of not less than two hundred rupees per annum; or
- (c) owns land in the constituency in respect of which land revenue amounting to not less than twenty-five rupees per annum is payable; or
- (d) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect thereof, either alone or together with

## THE NEW CONSTITUTION OF INDIA CH. VIII

any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than twenty-five rupees per annum ; or

- (e) is resident in the Hill Patti of Kumaun and, in the constituency, either owns a fee simple estate situate in these Hill Patti- or is assessed to the payment of land revenue or cesses of any amount in those Hill Patti, or is a Khaikar , or
- (f) is, in the constituency, a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, and is liable as such to rent of not less than twenty-five rupees per annum ; or
- (g) holds in the constituency as a tenant, land in respect of which a rent of not less than fifty rupees per annum or a rent in kind equivalent to not less than fifty rupees per annum is payable; or
- (h) was assessed in the previous financial year to income tax ; or
- (i) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

*Application necessary for enrolment in certain cases.*

10—(1) No person shall by virtue of paragraph five or subparagraph (a) or sub-paragraph (b) of paragraph eight of this Part of this Schedule, or by virtue of her husband

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being a retired, pensioned or discharged officer, non-commissioned officer or soldier, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by, or if it is so prescribed, on behalf of, that person that that person should be so included.

(2) On the preparation of the original electoral roll for any rural constituency or on any revision of the electoral roll for a rural constituency within three years from the commencement of Part III of this Act, no person shall by virtue of her husband possessing any of the other qualifications requisite for the purposes of the said paragraph eight be included in the electoral roll unless application is made in the prescribed manner by her, or if it is so prescribed, on her behalf, that she should be so included.

### *Interpretation &c.*

11.—(1) In this Schedule, in relation to the United Provinces—

“owner” does not include a mortgagee or a lessee, and “own” shall be construed accordingly ;

“tenant” as respects any land in a rural area means a tenant as defined in the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1883, as the case may be, and does not include a sub-tenant, and as respects any house or building means a person who occupies it on payment of rent, or in the case of a house, not situate in military or police lines, a person who occupies it rent free by virtue of any office, service or employment ;

“under-proprietor” means an under-proprietor as defined in the Oudh Rent Act, 1886 ;



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"**Khaikar**" means a person recorded as such in the records of rights of land in the Hill Patts of Kumaun ;

"**building**" means a building as defined in the United Provinces Municipalities Act, 1916 ;

"**rental value**" means the value of a house or building based on the amount of annual rent ;

"**municipal tax**" and "**house or building tax**," mean the taxes respectively known by those names imposed under the United Provinces Municipalities Act, 1916, the United Provinces Town Areas Act, 1914, and the Cantonments Act, 1924 ;

"**urban area**" means a municipality or notified area as defined in subsection (9) of section two, and subsection (2) of section three hundred and thirty-seven of the United Provinces Municipalities Act, 1916, or a town area as defined in the United Provinces Town Areas Act, 1914, or a cantonment ;

"**rural area**" means an area which is not an urban area.

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family or joint tenancy, the family or tenancy shall be adopted as the unit for deciding whether under this Part of this Schedule the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a joint Hindu family, the manager thereof or, if there is no manager, the member nominated in that behalf by the majority of the family, and in other cases the member nominated in that behalf by the family or tenancy concerned.

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SEVENTH SCHEDULE.

LEGISLATIVE LISTS.

LIST I.

FEDERAL LEGISLATIVE LIST.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas ( not being cantonment areas of Indian State troops ), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs, the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

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7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archæological sites and remains.

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### 16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation, the provision of aerodromes, regulation of air traffic and of aerodromes.

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25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporation, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development

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under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the

Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

- (a) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol, or any substance included in subparagraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

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53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

### LIST II.

#### PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.



2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment

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of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research and protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of old birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

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32. Relief of the poor ; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40 Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

- (a) alcoholic liquors for human consumption ;
- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.
42. Taxes on lands and buildings, hearths and windows.
43. Duties in respect of succession to agricultural land.
44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.
45. Capitation taxes.
46. Taxes on professions, trades, callings and employments.
47. Taxes on animals and boats.
48. Taxes on the sale of goods and on advertisements.
49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
52. Dues on passengers and goods carried on inland waterways.
53. Tolls.
54. Fees in respect of any of the matters in this list, but not including fees taken in any Court

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**LIST III.**

**CONCURRENT LEGISLATIVE LIST.**

**PART I.**

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against law with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

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### 9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

### 11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

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25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

### PART II.

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.





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# ERRATA.

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PAGE.	LINE.	CORRECTIONS.
1	... 5	... for 'for' read 'far'.
2	... 18	... „ 'relovent' read 'relevant'.
4	12 & 13	... read thus:—'prevention of action subjecting British or Burmese goods to.....'.
18	... 5	... insert 'a' after 'be'.
„	... „	... for 'so for' read 'so far'.
22	... 6	... „ 'subsides' read 'subsidies'.
24	... 3	... „ 'prastice' „ 'practise'.
25	... 18	... „ 'had' „ 'has'.
26	... 13	... „ 'meance' „ 'menace'.
31	... 14	... „ 'Sezerainty' „ 'suzerainty'.
47	... 7	... „ 'the the' „ 'the'.
„	... 15	... „ 'coviction' „ 'conviction'.
61	... 9	... insert 'of the' before 'Province'.
75	... 1	... „ 'to' after 'letter'.
98	... 9	... for 'is' read 'in'.
148	... 20	... „ 'form' read 'from'.
149	... 3	... „ 'recommendaitions' read 'recommendations'.
158	Section 171	... „ 'accouuts' read 'accounts'.
185	... 22	... „ 'wrote' „ 'stated'.
196	... 25	... „ 'convniently' read 'conveniently'.
226	... 2	... „ 'REPRESENTAIVES' read 'REPRESENTATIVES'.
241	... 6	... „ 'clectoral' read 'electoral'.
248	... 9	... „ 'proved' „ 'proved'.
„	... 11	... „ 'possesseses' read 'possesses'.
245	... 2	... „ 'officer' read 'officer'.
247	... 12	... „ 'intelligence' read 'intelligence'.

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